

# **Plaintiff's Response Exhibit 1**

Baker, Earl Donald

August 14, 2020

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

-----x  
EARL DONALD BAKER, Civil Action No.  
Plaintiff(s), 3:19-cv-30008-MGM  
v.  
SMITH & WESSON CORP.,  
Defendant(s).  
-----x

REMOTE VIDEOTAPED DEPOSITION OF EARL DONALD BAKER

Friday, August 14, 2020

9:36 a.m. Eastern

Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR

Videographer: Sarah Howard

Agency: Henderson Legal Services, Inc.

Ref. No. 48988

Henderson Legal Services, Inc.

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

Baker, Earl Donald

August 14, 2020

2 (Pages 2 to 5)

<div>2</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>APPEARANCES:</p><p>(All parties appearing remotely)</p><p>On Behalf of EARL DONALD BAKER:</p><p>Lee &amp; Breen, LLC</p><p>188 Industrial Drive</p><p>Elmhurst, Illinois 60126</p><p>(312) 241-1240</p><p>By: John Lee, Esq.</p><p>jlee@leebreenlaw.com</p><p>On Behalf of SMITH &amp; WESSON CORP.:</p><p>Polsinelli PC</p><p>1401 I Street, NW</p><p>Washington, DC 20005</p><p>(202) 783-3300</p><p>By: Connie N. Bertram, Esq.</p><p>cbertram@polsinelli.com</p><p>By: Jack Blum, Esq.</p><p>jack.blum@polsinelli.com</p><p>CONTINUED ON FOLLOWING PAGE</p></div>	<div>4</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>INDEX OF EXAMINATION</p><p>EXAMINATION OF EARL DONALD BAKER ..... PAGE</p><p>BY MS. BERTRAM ..... 8</p><p>BY MR. LEE ..... --</p><p>INDEX OF EXHIBITS</p><table><tr><th>NO.</th><th>DESCRIPTION</th><th>PAGE</th></tr><tr><td>Exhibit 1</td><td>Letter from Smith &amp; Wesson dated .. 25</td><td></td></tr><tr><td></td><td>2/28/2013 to Earl Donald Baker</td><td></td></tr><tr><td></td><td>Baker0002095 - Baker0002096</td><td></td></tr><tr><td>Exhibit 2</td><td>Cell Coordinator ..... 34</td><td></td></tr><tr><td></td><td>TELG_001538 - TELG_001540</td><td></td></tr><tr><td>Exhibit 3</td><td>April 15, 2013 Facebook post..... 45</td><td></td></tr><tr><td>Exhibit 4</td><td>Spreadsheet pages 1-10 containing . 61</td><td></td></tr><tr><td></td><td>substance of texts</td><td></td></tr><tr><td>Exhibit 5</td><td>Performance evaluation of June of . 77</td><td></td></tr><tr><td></td><td>2013 Baker0000071 - Baker0000072</td><td></td></tr><tr><td>Exhibit 6</td><td>Email dated November 7th, 2013..... 142</td><td></td></tr><tr><td>Exhibit 7</td><td>February 2014 performance ..... 146</td><td></td></tr><tr><td></td><td>evaluation</td><td></td></tr></table></div>	NO.	DESCRIPTION	PAGE	Exhibit 1	Letter from Smith & Wesson dated .. 25			2/28/2013 to Earl Donald Baker			Baker0002095 - Baker0002096		Exhibit 2	Cell Coordinator ..... 34			TELG_001538 - TELG_001540		Exhibit 3	April 15, 2013 Facebook post..... 45		Exhibit 4	Spreadsheet pages 1-10 containing . 61			substance of texts		Exhibit 5	Performance evaluation of June of . 77			2013 Baker0000071 - Baker0000072		Exhibit 6	Email dated November 7th, 2013..... 142		Exhibit 7	February 2014 performance ..... 146			evaluation	
NO.	DESCRIPTION	PAGE																																									
Exhibit 1	Letter from Smith & Wesson dated .. 25																																										
	2/28/2013 to Earl Donald Baker																																										
	Baker0002095 - Baker0002096																																										
Exhibit 2	Cell Coordinator ..... 34																																										
	TELG_001538 - TELG_001540																																										
Exhibit 3	April 15, 2013 Facebook post..... 45																																										
Exhibit 4	Spreadsheet pages 1-10 containing . 61																																										
	substance of texts																																										
Exhibit 5	Performance evaluation of June of . 77																																										
	2013 Baker0000071 - Baker0000072																																										
Exhibit 6	Email dated November 7th, 2013..... 142																																										
Exhibit 7	February 2014 performance ..... 146																																										
	evaluation																																										
<div>3</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>APPEARANCES (continued):</p><p>On Behalf of SMITH &amp; WESSON CORP. (continued):</p><p>Bulkley, Richardson and Gelinas, LLP</p><p>1500 Main Street, Suite 2700</p><p>Springfield, Massachusetts 01115</p><p>By: Jeffrey E. Poindexter, Esq.</p><p>jpoindexter@bulkley.com</p></div>	<div>5</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>Exhibit 8 Earl Baker Result 2/7/14 ..... 147</p><p>Baker0000110</p><p>Exhibit 9 Earl Baker Result 2/7/14 Response . 147</p><p>SW0000112 - SW0000114</p><p>Exhibit 10 (skipped)</p><p>Exhibit 11 Email correspondence from ..... 155</p><p>(topmost) E Baker to D Fontaine</p><p>4/17/2014 SW0000493</p><p>Exhibit 12 (skipped)</p><p>Exhibit 13 Earl Baker's Training Program ..... 157</p><p>2/4/14 Baker0000096</p><p>Exhibit 14 Performance Appraisal 6/5/14 ..... 167</p><p>Baker0000176 - Baker0000178</p><p>Exhibit 15 E. Baker Goals 6/18/14 with ..... 168</p><p>handwritten notes</p><p>Baker0000181 - Baker0000182</p><p>Exhibit 16 Earl Baker 2014 Review Rebuttal ... 172</p><p>Baker0000172 - Baker0000175</p><p>Exhibit 17 Email with attached letter dated .. 185</p><p>9/23/2014 to Earl Baker from Anne</p><p>Bruce Baker0000535 - Baker0000536</p><p>Exhibit 18 (skipped)</p><p>Exhibit 19 Amended Complaint for Relief..... 213</p></div>																																										

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 INDEX OF EXHIBITS (continued)</p> <p>2</p> <p>3</p> <p>4 Exhibits 20-24 (skipped)</p> <p>5 Exhibit 25 Email correspondence from ..... 222</p> <p>6 (topmost) E Baker to E Suraci</p> <p>7 sent 3/26/2014</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 THE REPORTER: Thank you. Would you raise</p> <p>2 your right hand, please, sir.</p> <p>3 EARL DONALD BAKER,</p> <p>4 having been first sworn and/or affirmed on</p> <p>5 his oath, was thereafter examined and testified as</p> <p>6 follows:</p> <p>7 THE REPORTER: Thank you, counsel.</p> <p>8 MS. BERTRAM: And do you need to do</p> <p>9 something with his driver's license?</p> <p>10 THE REPORTER: We did that. Thank you.</p> <p>11 MS. BERTRAM: Okay. Good.</p> <p>12 EXAMINATION 09:36:49</p> <p>13 BY MS. BERTRAM: 09:36:49</p> <p>14 Q. Mr. Baker, my name is Connie Bertram, as 09:36:56</p> <p>15 you know, and I'm with the law firm of Polsinelli PC. 09:36:59</p> <p>16 Have you ever been deposed before? 09:37:03</p> <p>17 A. No. 09:37:04</p> <p>18 Q. Have you ever provided sworn testimony in 09:37:05</p> <p>19 any type of proceeding? 09:37:08</p> <p>20 A. I don't believe so. 09:37:09</p> <p>21 Q. So let me go through some of the ground 09:37:13</p> <p>22 rules for the deposition. It's not like an ordinary 09:37:15</p> <p>23 conversation. We do have a court reporter who is 09:37:18</p> <p>24 present. She's going to be recording your testimony. 09:37:20</p> <p>25 Do you understand that? 09:37:23</p>
<p style="text-align: right;">7</p> <p>1 PROCEEDINGS</p> <p>2 VIDEO SPECIALIST: Here begins video 1 in 09:35:12</p> <p>3 the video-recorded deposition of Earl Baker, taken in 09:35:14</p> <p>4 the matter of Earl Donald Baker vs. Smith &amp; Wesson 09:35:18</p> <p>5 Corporation, in the United States District Court, for 09:35:22</p> <p>6 the District of Massachusetts, case number 09:35:24</p> <p>7 3:19-CV-30008-MGM. 09:35:32</p> <p>8 Today's date is August 14th, 2020. The time is 09:35:36</p> <p>9 9:36 a.m. This deposition is being held remote, video 09:35:40</p> <p>10 deposition using Zoom reporting, in Colorado Springs, 09:35:47</p> <p>11 Colorado. The court reporter is Linda Kinkade. The 09:35:52</p> <p>12 videographer is Sarah Howard. Both are presenting on 09:35:55</p> <p>13 behalf of Henderson Legal Services. 09:35:59</p> <p>14 Will counsels please introduce themselves and 09:36:02</p> <p>15 state whom they represent. 09:36:04</p> <p>16 MR. LEE: John Lee representing Earl Baker. 09:36:07</p> <p>17 MS. BERTRAM: And this is Connie Bertram 09:36:12</p> <p>18 representing Smith &amp; Wesson. And I have in the room 09:36:15</p> <p>19 with me Jack Blum. 09:36:18</p> <p>20 VIDEO SPECIALIST: Will the court reporter 09:36:22</p> <p>21 please swear in the witness remotely.</p> <p>22 THE REPORTER: And counsel will agree that</p> <p>23 I can report today remotely? So stipulated?</p> <p>24 MR. LEE: Yes.</p> <p>25 MS. BERTRAM: Yes.</p>	<p style="text-align: right;">9</p> <p>1 A. Yes. 09:37:24</p> <p>2 Q. She's going to be creating a transcript 09:37:25</p> <p>3 that you'll have an opportunity to review. So that 09:37:29</p> <p>4 that transcript is clear, we need to make certain that 09:37:32</p> <p>5 we provide verbal responses. Do you understand that? 09:37:36</p> <p>6 A. Yes. 09:37:38</p> <p>7 Q. And also it's very important that we 09:37:38</p> <p>8 understand each other during the course of the 09:37:45</p> <p>9 deposition. If you don't understand a question that 09:37:47</p> <p>10 I've asked you, just ask me to repeat it or to 09:37:49</p> <p>11 rephrase it to make sure that you heard and you 09:37:53</p> <p>12 understand the question. Do you understand that? 09:38:01</p> <p>13 A. Yes. 09:38:02</p> <p>14 Q. Also, this is an issue for all depositions, 09:38:03</p> <p>15 but particularly when they are being taken by Zoom, 09:38:05</p> <p>16 it's very important that we not talk over each other. 09:38:08</p> <p>17 So please wait until my question has been completed 09:38:12</p> <p>18 before you answer it. Do you understand that? 09:38:17</p> <p>19 A. Yes. 09:38:19</p> <p>20 Q. And do you understand that you're under 09:38:19</p> <p>21 oath; is that right? Was that a yes? 09:38:23</p> <p>22 A. Yes. 09:38:28</p> <p>23 Q. And just as if you're testifying before the 09:38:28</p> <p>24 court, you have an obligation to tell the truth. Do 09:38:34</p> <p>25 you understand that? 09:38:36</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

4 (Pages 10 to 13)

10	12
<p>1 <b>A. Yes.</b> 09:38:37</p> <p>2 Q. Is there anything that could interfere with 09:38:37</p> <p>3 your ability to understand the questions I'm asking 09:38:44</p> <p>4 you today? 09:38:48</p> <p>5 <b>A. Not that I'm aware of.</b> 09:38:50</p> <p>6 Q. Is there anything that would prevent you 09:38:51</p> <p>7 from providing complete and truthful testimony during 09:38:54</p> <p>8 your deposition today? 09:38:58</p> <p>9 <b>A. No.</b> 09:38:59</p> <p>10 Q. Have you taken any drugs or medications 09:38:59</p> <p>11 that could negatively impact your ability to remember 09:39:02</p> <p>12 facts or events? 09:39:07</p> <p>13 <b>A. No.</b> 09:39:09</p> <p>14 Q. Have you consumed alcohol in the past eight 09:39:09</p> <p>15 hours? 09:39:14</p> <p>16 <b>A. No.</b> 09:39:14</p> <p>17 Q. Have you consumed any drugs or used any 09:39:15</p> <p>18 drugs in the past eight hours? 09:39:18</p> <p>19 <b>A. I took Prilosec and ibuprofen.</b> 09:39:20</p> <p>20 Q. Okay. Do you feel that either of them 09:39:26</p> <p>21 would impair your ability to provide complete and 09:39:27</p> <p>22 truthful testimony today? 09:39:31</p> <p>23 <b>A. No.</b> 09:39:32</p> <p>24 Q. Now in the OSHA proceedings we had asked 09:39:32</p> <p>25 you some questions, some interrogatories, and you 09:39:37</p>	<p>1 He didn't say there was a lawsuit or -- but go 09:40:57</p> <p>2 ahead. Go ahead and answer. 09:41:02</p> <p>3 <b>A. I don't recall whether it was a collection 09:41:04</b></p> <p>4 agency or a hospital. 09:41:07</p> <p>5 Q. Okay. Who did you owe the money to 09:41:09</p> <p>6 originally? 09:41:12</p> <p>7 <b>A. It would have been to Summa Healthcare.</b> 09:41:13</p> <p>8 Q. And where is that located? 09:41:17</p> <p>9 <b>A. I believe in -- I believe that would have 09:41:19</b></p> <p>10 been in Akron, Ohio. 09:41:27</p> <p>11 Q. And have you ever declared bankruptcy? 09:41:31</p> <p>12 <b>A. No.</b> 09:41:34</p> <p>13 Q. Have you ever been arrested? 09:41:34</p> <p>14 <b>A. No.</b> 09:41:35</p> <p>15 Q. Have you ever been charged or convicted of 09:41:36</p> <p>16 any crime? 09:41:39</p> <p>17 <b>A. No.</b> 09:41:39</p> <p>18 Q. Where do you currently work? 09:41:40</p> <p>19 <b>A. Master Machining, Incorporated LLC in 09:41:43</b></p> <p>20 Castle Hayne, North Carolina. 09:41:49</p> <p>21 Q. And what town was that? I'm sorry. 09:41:55</p> <p>22 <b>A. Castle Hayne.</b> 09:41:57</p> <p>23 Q. And when did you start working at Astra? 09:41:59</p> <p>24 <b>A. No, I'm sorry, it's Master Machining.</b> 09:42:03</p> <p>25 Q. Okay. Okay. I'm sorry. I'm still having 09:42:06</p>
11	13
<p>1 answered those, correct? 09:39:39</p> <p>2 <b>A. Yes.</b> 09:39:40</p> <p>3 Q. And so I'm going to focus at least 09:39:41</p> <p>4 initially on the period after your termination by 09:39:44</p> <p>5 Smith &amp; Wesson, so after September of 2014. 09:39:49</p> <p>6 Since that time have you ever -- have you been 09:39:54</p> <p>7 a party in any litigation? 09:39:57</p> <p>8 <b>A. I'm unsure of the timing of the litigation, 09:39:59</b></p> <p>9 but we had some issues relating to a medical bill, 09:40:10</p> <p>10 which you have been copied on, over the last few 09:40:15</p> <p>11 years, but that was all. 09:40:20</p> <p>12 Q. That's it? That's the only potential 09:40:23</p> <p>13 litigation that you've been involved in? 09:40:26</p> <p>14 <b>A. That I can recall, yes.</b> 09:40:27</p> <p>15 Q. And what was the -- what was the amount at 09:40:28</p> <p>16 issue? 09:40:31</p> <p>17 <b>A. The amount?</b> 09:40:31</p> <p>18 Q. Mm-hmm. 09:40:34</p> <p>19 <b>A. I don't recall the exact amount.</b> 09:40:35</p> <p>20 Q. What was the amount generally? 09:40:39</p> <p>21 <b>A. Generally around \$10,000, I would guess.</b> 09:40:41</p> <p>22 Q. And who was the or what was the plaintiff 09:40:47</p> <p>23 in that -- in that matter? 09:40:50</p> <p>24 MR. LEE: Object to the form of the 09:40:53</p> <p>25 question, but you may answer. 09:40:54</p>	<p>1 a little bit of trouble hearing you. So if you can 09:42:09</p> <p>2 keep your voice up, that would be great. 09:42:11</p> <p>3 And what's your current position with Master 09:42:15</p> <p>4 Machining? 09:42:18</p> <p>5 <b>A. Machinist.</b> 09:42:18</p> <p>6 Q. And that's the position you've been in -- 09:42:21</p> <p>7 how long have you been in that position now? 09:42:25</p> <p>8 <b>A. I worked there for a year and six months, 09:42:27</b></p> <p>9 and then had occasion to take a job as an inspector at 09:42:33</p> <p>10 GE, and now I'm back in that role since, I believe it 09:42:38</p> <p>11 was April of 2020. So there's interruption between, 09:42:43</p> <p>12 so it's not a -- 09:42:49</p> <p>13 Q. What made you decide to go back to Master 09:42:52</p> <p>14 Machining? 09:42:55</p> <p>15 <b>A. They had a reduction in force at GE across 09:42:55</b></p> <p>16 the company spectrum due to the issue, ongoing issues 09:42:59</p> <p>17 with Boeing, and also the COVID situation has 09:43:05</p> <p>18 curtailed many of the contracts that GE has with -- I 09:43:12</p> <p>19 was in the aviation division, so they are experiencing 09:43:17</p> <p>20 an 80 percent reduction in work. 09:43:21</p> <p>21 Q. And have you ever -- other than 09:43:26</p> <p>22 Smith &amp; Wesson, have you ever made an internal or 09:43:28</p> <p>23 external complaint against any employer? 09:43:31</p> <p>24 <b>A. No.</b> 09:43:33</p> <p>25 Q. At some point you were approached about 09:43:34</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

5 (Pages 14 to 17)

14	16
<p>1 working for Smith &amp; Wesson in 2013, right? 09:43:45</p> <p>2 <b>A. Yes.</b> 09:43:48</p> <p>3 Q. And who approached you about working for 09:43:49</p> <p>4 the company? 09:43:52</p> <p>5 <b>A. His last name was Sargent. He's a</b> 09:43:52</p> <p>6 <b>recruiter out of Florida. I later found out that he</b> 09:43:58</p> <p>7 <b>worked at Smith &amp; Wesson previously and that he was a</b> 09:44:03</p> <p>8 <b>friend and associate, a good friend of Larry</b> 09:44:08</p> <p>9 <b>Flatley's, so, as a recruiter, he contacted me.</b> 09:44:14</p> <p>10 Q. Okay. And were you looking for a job when 09:44:18</p> <p>11 he reached out to you? 09:44:21</p> <p>12 <b>A. There had been a period I had looked for a</b> 09:44:23</p> <p>13 <b>job, but I was not currently looking at that point.</b> 09:44:28</p> <p>14 Q. And when he approached you, you had been 09:44:31</p> <p>15 working at Lakeland Tool for 22 years, right? 09:44:33</p> <p>16 <b>A. Lake Tool, yes. It was my company that I</b> 09:44:37</p> <p>17 <b>started in 1991.</b> 09:44:39</p> <p>18 Q. And what products or services did that 09:44:41</p> <p>19 company offer? 09:44:46</p> <p>20 <b>A. We were a support industry for machining in</b> 09:44:47</p> <p>21 <b>predominantly the Akron, Ohio area, but we had</b> 09:44:57</p> <p>22 <b>customers as far away as Amarillo, Texas, and, you</b> 09:45:01</p> <p>23 <b>know, so we had -- we weren't limited to that area,</b> 09:45:08</p> <p>24 <b>but most of them were from there.</b> 09:45:11</p> <p>25 Q. And you said that you provided support for 09:45:13</p>	<p>1 <b>I can't remember his last name -- but he was based</b> 09:46:53</p> <p>2 <b>in -- originally from Elkhart, Indiana, and he would</b> 09:46:58</p> <p>3 <b>bring me jobs, I'd quote them, and he would distribute</b> 09:47:04</p> <p>4 <b>the work to my customers or to his customers.</b> 09:47:07</p> <p>5 Q. And did you specialize in any particular 09:47:10</p> <p>6 type of manufacturing or industry? 09:47:13</p> <p>7 <b>A. Actually as part of our business plan we</b> 09:47:16</p> <p>8 <b>tried to diversify with different businesses we worked</b> 09:47:21</p> <p>9 <b>with, so that, when one sector was down, the other</b> 09:47:24</p> <p>10 <b>sector would be busy, and that allowed us to stay</b> 09:47:27</p> <p>11 <b>afloat when other companies did not. So we had a</b> 09:47:32</p> <p>12 <b>multiple range.</b> 09:47:38</p> <p>13 Q. And let's focus on -- so you said you 09:47:38</p> <p>14 started in 1991, right? 09:47:43</p> <p>15 <b>A. Yes.</b> 09:47:45</p> <p>16 Q. So let's focus on 1995. How many tools per 09:47:45</p> <p>17 year was Lakeland manufacturing? 09:47:52</p> <p>18 <b>A. It would be too hard to even estimate.</b> 09:47:56</p> <p>19 Q. Okay. Did your production numbers increase 09:47:59</p> <p>20 over time? 09:48:02</p> <p>21 <b>A. Yes. I think that we, from '91 on through</b> 09:48:03</p> <p>22 <b>up until probably the first 15 years, I would say</b> 09:48:09</p> <p>23 <b>there was a gradual increase every year, and we</b> 09:48:15</p> <p>24 <b>gradually added machines. So it increased, but there</b> 09:48:20</p> <p>25 <b>were years where the economies -- where there would be</b> 09:48:23</p>
15	17
<p>1 machining. What type of support did you provide? 09:45:16</p> <p>2 <b>A. We sharpened their tools and made -- made</b> 09:45:19</p> <p>3 <b>and designed tooling systems to -- for them to machine</b> 09:45:22</p> <p>4 <b>parts. So there's more than one way to do things, so</b> 09:45:30</p> <p>5 <b>we would at times give our expertise on what tooling</b> 09:45:32</p> <p>6 <b>should be made and give quotes and, of course, make</b> 09:45:38</p> <p>7 <b>those tools.</b> 09:45:43</p> <p>8 Q. And what types of tools did you -- 09:45:43</p> <p>9 <b>A. Predominantly cutting tools.</b> 09:45:49</p> <p>10 Q. And did you sell your tools through a 09:45:52</p> <p>11 distributor? 09:45:55</p> <p>12 <b>A. No.</b> 09:45:55</p> <p>13 Q. So you sold them only directly to 09:45:57</p> <p>14 manufacturing facilities; is that right? 09:46:01</p> <p>15 <b>A. I did market my own, but there were a</b> 09:46:03</p> <p>16 <b>couple of distributors that used me as a source, so I</b> 09:46:08</p> <p>17 <b>did both work where I had direct contact and then</b> 09:46:15</p> <p>18 <b>there were a couple of vendors that would act as an</b> 09:46:19</p> <p>19 <b>agent to sell my services elsewhere.</b> 09:46:24</p> <p>20 Q. And which companies acted as distributors 09:46:27</p> <p>21 or agents for your company? 09:46:29</p> <p>22 <b>A. One was called Chrome Hard. They sold new</b> 09:46:31</p> <p>23 <b>tools. They also offered a resharpening service that</b> 09:46:35</p> <p>24 <b>they would then sublet to me. And then there was</b> 09:46:40</p> <p>25 <b>another person, his last name escapes me, but Jeff --</b> 09:46:44</p>	<p>1 <b>fluctuations.</b> 09:48:29</p> <p>2 Q. What was the last part of what you just 09:48:29</p> <p>3 said? 09:48:32</p> <p>4 <b>A. As the economy of the country increased or</b> 09:48:32</p> <p>5 <b>decreased, of course, you might have a year that fell</b> 09:48:35</p> <p>6 <b>back a little bit, but, overall, the whole range, the</b> 09:48:40</p> <p>7 <b>22 years, it gradually got better every year for the</b> 09:48:45</p> <p>8 <b>first 15 years. The last five were more up and down.</b> 09:48:50</p> <p>9 Q. And the last full year that you operated 09:49:01</p> <p>10 was 2012, right? 09:49:10</p> <p>11 <b>A. Yes. The last full year, yes.</b> 09:49:12</p> <p>12 Q. Okay. How many machines did you have at 09:49:15</p> <p>13 that point for making tools? 09:49:18</p> <p>14 <b>A. Thirty-six.</b> 09:49:21</p> <p>15 Q. And how many tools did you manufacture 09:49:24</p> <p>16 during that year? 09:49:29</p> <p>17 <b>A. Really didn't count. I couldn't tell you</b> 09:49:30</p> <p>18 <b>off the top of my head.</b> 09:49:37</p> <p>19 Q. Do you recall what your revenue was in 09:49:37</p> <p>20 2012? 09:49:40</p> <p>21 <b>A. Not really specifically. I know generally.</b> 09:49:41</p> <p>22 Q. What was it generally? 09:49:48</p> <p>23 <b>A. Generally it was in the hundred thousand</b> 09:49:49</p> <p>24 <b>dollar range is what our billables, but it's hard</b> 09:49:53</p> <p>25 <b>to -- hard to extrapolate that when you're an</b> 09:50:00</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

6 (Pages 18 to 21)

18	20
<p>1 entrepreneur how much of that is actually income or 09:50:05</p> <p>2 how much gets invested back into the company by 09:50:09</p> <p>3 purchasing, you know, other machines and so forth, 09:50:13</p> <p>4 reinvestment. 09:50:16</p> <p>5 Q. And the only manufacturing that Lakeland 09:50:16</p> <p>6 did was tool manufacturing, right? 09:50:23</p> <p>7 A. No, we did some jobs for people with -- I 09:50:26</p> <p>8 had machining expertise, and if there was a part that 09:50:32</p> <p>9 had a extraordinarily tight tolerance, I might do that 09:50:36</p> <p>10 work for them. So that wasn't necessarily all 09:50:41</p> <p>11 tooling. 09:50:44</p> <p>12 And to correct you, it's Lake Tool. Lake was 09:50:45</p> <p>13 an acronym of my children's names. So it's Lake Tool, 09:50:48</p> <p>14 L-A-K-E. 09:50:54</p> <p>15 Q. Thank you for clarifying that. And what 09:50:55</p> <p>16 percentage of the work that Lake did was manufacturing 09:51:01</p> <p>17 versus manufacturing a product as opposed to a tool? 09:51:06</p> <p>18 A. It had to be at least 95 percent tooling. 09:51:10</p> <p>19 Q. And did you use any principles of lean 09:51:15</p> <p>20 manufacturing in the production work that you were 09:51:27</p> <p>21 doing? 09:51:29</p> <p>22 A. Not by that specific title, but I was 09:51:29</p> <p>23 somewhat of a nerd in that when a lot of people -- 09:51:33</p> <p>24 MR. LEE: A what? 09:51:38</p> <p>25 THE WITNESS: A nerd. 09:51:39</p>	<p>1 Q. Did you work with a RoboCrib at Lake? 09:53:09</p> <p>2 A. I did not have a RoboCrib, but many of my 09:53:13</p> <p>3 customers did. 09:53:17</p> <p>4 Q. And did you use pitch boards? 09:53:19</p> <p>5 A. I did not. 09:53:22</p> <p>6 Q. How large was your facility at Lake? 09:53:24</p> <p>7 A. It would be small by -- in comparison to 09:53:31</p> <p>8 most companies in that my machines weren't massive 09:53:36</p> <p>9 machines. So I think our facility was a 48 x 48 09:53:39</p> <p>10 facility, and then we had offsite offices. I 09:53:48</p> <p>11 maintained an office and machines in my residence so 09:53:52</p> <p>12 that I could respond to jobs in a quick manner. 09:53:58</p> <p>13 Q. And I take it you had about five employees 09:54:05</p> <p>14 at most at Lake? 09:54:09</p> <p>15 A. Yes. 09:54:11</p> <p>16 Q. And how many employees did you have as of 09:54:11</p> <p>17 2012? 09:54:17</p> <p>18 A. 2012 I had between one and two employees. 09:54:17</p> <p>19 We had one at the very end. Throughout most of 2012 I 09:54:28</p> <p>20 had two. And I may have actually had three at the 09:54:35</p> <p>21 beginning, I'm not sure. 09:54:39</p> <p>22 Q. Okay. And how did your revenue in 2012 09:54:40</p> <p>23 compare to 2011? 09:54:43</p> <p>24 A. I'm not sure. I think it was about the 09:54:46</p> <p>25 same. 09:54:50</p>
19	21
<p>1 MR. LEE: Oh, okay. 09:51:40</p> <p>2 A. When we would go to the beach or were -- my 09:51:42</p> <p>3 wife would read a, you know, a novel and I would read 09:51:47</p> <p>4 books on management. So those principles were done 09:51:53</p> <p>5 within my business, but not under the guise of, you 09:51:59</p> <p>6 know, I didn't maybe put that label of "lean 09:52:06</p> <p>7 manufacturing." We didn't have a lean pitch board for 09:52:08</p> <p>8 our size company, but lean principles were used 09:52:12</p> <p>9 throughout our industry, and I did use those 09:52:17</p> <p>10 principles to grow Lake Tool into a successful 09:52:21</p> <p>11 organization. 09:52:25</p> <p>12 Q. And did you purchase metals and other -- 09:52:27</p> <p>13 other items that were needed to manufacture the tools? 09:52:32</p> <p>14 A. Yes. 09:52:36</p> <p>15 Q. And did you use a procurement process for 09:52:36</p> <p>16 that? 09:52:39</p> <p>17 A. No. 09:52:39</p> <p>18 Q. Pardon me? 09:52:43</p> <p>19 A. There wasn't really a process. I was the 09:52:44</p> <p>20 sole owner, so I didn't have to go through any 09:52:47</p> <p>21 procurement process that would take place in a larger 09:52:52</p> <p>22 company. 09:52:56</p> <p>23 Q. And did you take any supplies or tools or 09:52:56</p> <p>24 other items on consignment in the work that you did? 09:53:00</p> <p>25 A. Not that I can recall. 09:53:04</p>	<p>1 Q. And how did the revenue in 2011 compare to 09:54:51</p> <p>2 2010? 09:54:55</p> <p>3 A. I would say about the same. 09:54:55</p> <p>4 Q. Was there a point where your revenue 09:54:58</p> <p>5 dropped off as a consequence of the recession or any 09:55:00</p> <p>6 other factors? 09:55:07</p> <p>7 A. Yes, 2008. 09:55:08</p> <p>8 Q. Okay. And it went down after that, is that 09:55:09</p> <p>9 right, for 2008, 2009, and 2010? 09:55:13</p> <p>10 A. There was a dip in 2008, but we had 09:55:16</p> <p>11 rebounded from that somewhat. 09:55:20</p> <p>12 Q. Was Lake Tool always owned by you 100 09:55:23</p> <p>13 percent? 09:55:27</p> <p>14 A. Yes. Yes. 09:55:27</p> <p>15 Q. And you never reported to anybody when you 09:55:28</p> <p>16 worked at Lake, correct? 09:55:32</p> <p>17 A. Correct. 09:55:34</p> <p>18 Q. As of when you went to work for 09:55:35</p> <p>19 Smith &amp; Wesson in 2013, what was the status of Lake 09:55:42</p> <p>20 Tool? 09:55:48</p> <p>21 MR. LEE: Objection to the form of the 09:55:48</p> <p>22 question, but you may answer. 09:55:49</p> <p>23 A. I'm not sure what you're saying. What was 09:55:51</p> <p>24 the status? 09:55:54</p> <p>25 Q. Was it still operational? 09:55:56</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 <b>A. Yes.</b> 09:55:58</p> <p>2 Q. Was it still servicing customers? 09:55:58</p> <p>3 <b>A. Yes.</b> 09:56:01</p> <p>4 Q. How many customers did it have at that 09:56:01</p> <p>5 point? 09:56:05</p> <p>6 <b>A. As far as I -- we could have a customer 09:56:10</b></p> <p>7 <b>that wouldn't do business with us for three months or 09:56:14</b></p> <p>8 <b>five months, but they were still a customer. Then 09:56:16</b></p> <p>9 <b>they would come back and ask for a tool. 09:56:21</b></p> <p>10 <b>So we didn't have any that, say, there was a 09:56:23</b></p> <p>11 <b>termination point where they say we're not going to do 09:56:28</b></p> <p>12 <b>business with you any longer, they just -- we did 09:56:31</b></p> <p>13 <b>business with all of them. 09:56:36</b></p> <p>14 <b>So I would imagine that we had 20 customers at 09:56:37</b></p> <p>15 <b>that time that would give us work, you know, when they 09:56:46</b></p> <p>16 <b>needed it. 09:56:48</b></p> <p>17 Q. And did you have any employees as of March 09:56:49</p> <p>18 of 2014? I'm sorry. Let me -- let me strike that and 09:56:51</p> <p>19 state it again. 09:56:54</p> <p>20 Did you have any employees as of March of 2013? 09:56:55</p> <p>21 <b>A. Yes.</b> 09:56:58</p> <p>22 Q. And were you making revenue at that 09:56:58</p> <p>23 point -- 09:57:02</p> <p>24 <b>A. Yes.</b> 09:57:03</p> <p>25 Q. -- at Lake Tool? And were you generating 09:57:04</p>	<p style="text-align: right;">24</p> <p>1 <b>there was another company that became interested in 09:59:05</b></p> <p>2 <b>me. And I actually flew from my interview from 09:59:08</b></p> <p>3 <b>Smith &amp; Wesson and met someone in, I believe it was 09:59:14</b></p> <p>4 <b>Finley, Ohio, to interview for a job there. 09:59:21</b></p> <p>5 <b>(Jeffrey Poindexter, Esq. joined the 09:59:26</b></p> <p>6 <b>deposition) 09:59:30</b></p> <p>7 Q. And when did you first start trying to sell 09:59:30</p> <p>8 the equipment at Lake Tool? 09:59:33</p> <p>9 <b>A. Once we had an agreement and a decision 09:59:34</b></p> <p>10 <b>that we were going to proceed in a certain direction, 09:59:38</b></p> <p>11 <b>so, you know, then it became job one to get the 09:59:42</b></p> <p>12 <b>business sold. 09:59:46</b></p> <p>13 Q. And when you say once you had signed the 09:59:47</p> <p>14 deal, are you talking about signing the offer letter 09:59:50</p> <p>15 with Smith &amp; Wesson? 09:59:54</p> <p>16 <b>A. Yes.</b> 09:59:55</p> <p>17 Q. And how long did it take you to sell the 09:59:56</p> <p>18 equipment? 09:59:58</p> <p>19 <b>A. I can't recall the actual date when I 09:59:58</b></p> <p>20 <b>signed with Smith &amp; Wesson, but we had a deal in place 10:00:04</b></p> <p>21 <b>by, I would say, around the first of March, but that's 10:00:10</b></p> <p>22 <b>just a guess. 10:00:16</b></p> <p>23 Q. Why don't we look at Exhibit 1, which is 10:00:17</p> <p>24 the offer letter that you received from 10:00:21</p> <p>25 Smith &amp; Wesson. 10:00:24</p>
<p style="text-align: right;">23</p> <p>1 any profit? 09:57:07</p> <p>2 <b>A. We actually, I believe, was contacted by 09:57:08</b></p> <p>3 <b>Mr. Sargent in either late 2012, and it was just in 09:57:12</b></p> <p>4 <b>the beginning phase, we were just talking. And then 09:57:22</b></p> <p>5 <b>as it ramped down we stopped taking in as many orders. 09:57:25</b></p> <p>6 <b>So by the end we didn't want to leave things 09:57:31</b></p> <p>7 <b>hanging with customers that they didn't have the 09:57:34</b></p> <p>8 <b>ability to get tools, so we slowly ramped down. We 09:57:38</b></p> <p>9 <b>stopped taking in orders. And when we got to the last 09:57:44</b></p> <p>10 <b>couple months we -- we were full-scale into trying to 09:57:48</b></p> <p>11 <b>find a buyer for Lake Tool and then also facilitate, 09:57:53</b></p> <p>12 <b>once we did find a buyer, getting that machinery 09:58:01</b></p> <p>13 <b>transferred over to them. 09:58:05</b></p> <p>14 Q. And when did you start ramping down? 09:58:08</p> <p>15 <b>A. It's hard to say exactly. 09:58:13</b></p> <p>16 Q. Was it in 2013? 09:58:17</p> <p>17 <b>A. Yes.</b> 09:58:20</p> <p>18 Q. And what triggered you starting to ramp 09:58:22</p> <p>19 down? 09:58:26</p> <p>20 <b>A. We had an interview on, I think by phone, 09:58:27</b></p> <p>21 <b>and when that concluded, they set up an on-site 09:58:38</b></p> <p>22 <b>interview at Smith &amp; Wesson, and it was after that 09:58:44</b></p> <p>23 <b>commitment to them that we were -- that it was a go. 09:58:50</b></p> <p>24 <b>I actually had another company that -- in 09:58:56</b></p> <p>25 <b>talking with companies about purchasing my Lake Tool, 09:59:00</b></p>	<p style="text-align: right;">25</p> <p>1 MS. BERTRAM: John, are you able to access 10:00:26</p> <p>2 the files? 10:00:28</p> <p>3 MR. LEE: Hold on. Did Missy send it to 10:00:28</p> <p>4 us? Hold on. 10:00:33</p> <p>5 MS. BERTRAM: She sent the link, and I saw 10:00:33</p> <p>6 that you-all responded to her, but I didn't see what 10:00:36</p> <p>7 either of them said. 10:00:39</p> <p>8 MR. LEE: Oh. So let's make this 10:00:40</p> <p>9 Smith &amp; Wesson 1, Smith &amp; Wesson 2, and so on? 10:00:46</p> <p>10 MS. BERTRAM: They're marked as exhibits up 10:00:48</p> <p>11 in the upper right-hand corner on the PDF. 10:00:50</p> <p>12 THE REPORTER: Counsel, you'll be sending 10:01:02</p> <p>13 me the link as well? 10:01:04</p> <p>14 MS. BERTRAM: I'll send them to you after 10:01:05</p> <p>15 the deposition. 10:01:06</p> <p>16 THE REPORTER: Sure. 10:01:07</p> <p>17 THE WITNESS: Okay. I'm looking at it. 10:01:09</p> <p>18 MS. BERTRAM: Okay. John, do you have 10:01:10</p> <p>19 access to it? 10:01:12</p> <p>20 MR. LEE: Yeah, I have Exhibit 1. 10:01:13</p> <p>21 (Exhibit 1 previously marked 10:01:13</p> <p>22 for identification and referenced 10:01:13</p> <p>23 herein: Letter from Smith &amp; Wesson 10:01:13</p> <p>24 dated 2/28/2013 to Earl Donald Baker 10:01:13</p> <p>25 Baker0002095 - Baker0002096) 10:01:16</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

8 (Pages 26 to 29)

26	28
<p>1 Q. Okay. Good. Mr. Baker, this is a February 10:01:16</p> <p>2 28th, 2013 letter from Smith &amp; Wesson to you, correct? 10:01:20</p> <p>3 A. Yes. 10:01:25</p> <p>4 Q. And you signed that on the second page on 10:01:25</p> <p>5 March 4th of 2013, correct? 10:01:29</p> <p>6 A. Yes. 10:01:36</p> <p>7 Q. And so did you sell the equipment of Lake 10:01:38</p> <p>8 Tool after March 4th of 2013? 10:01:43</p> <p>9 A. Yes. 10:01:45</p> <p>10 Q. And how soon after you signed the offer 10:01:46</p> <p>11 letter? 10:01:48</p> <p>12 A. Sometime between then and March 23rd. 10:01:49</p> <p>13 Q. And March what? 10:01:54</p> <p>14 A. 23rd. 10:01:55</p> <p>15 Q. Okay. And did you get full asking price 10:01:56</p> <p>16 for the equipment that you sold? 10:01:59</p> <p>17 A. No. I actually -- the company I sold to 10:02:01</p> <p>18 was only interested in my -- the name of my company 10:02:07</p> <p>19 and the reputation and the customer base, and they 10:02:12</p> <p>20 weren't really interested in the tooling. 10:02:18</p> <p>21 So we ended up selling some tooling to 10:02:20</p> <p>22 different competitors of mine in the area. So Fox 10:02:28</p> <p>23 Toolbox and Tools and Machines, and there were at 10:02:33</p> <p>24 least four companies that purchased different parts, 10:02:38</p> <p>25 but I facilitated piecemealing, sending stuff that the 10:02:40</p>	<p>1 A. The sale of the building took place 10:04:07</p> <p>2 sometime over that first year at Smith &amp; Wesson, and 10:04:11</p> <p>3 it was done remotely, and we ended up selling it for a 10:04:16</p> <p>4 loss. 10:04:19</p> <p>5 Q. And do you recall what you sold it for? 10:04:20</p> <p>6 A. I believe it was -- no, I don't really 10:04:23</p> <p>7 recall the exact amount, but I know that we didn't get 10:04:32</p> <p>8 what we wanted, so we actually had a balance left that 10:04:37</p> <p>9 we had to pay the bank for. 10:04:41</p> <p>10 In 2008 was when the market bubble burst, so 10:04:44</p> <p>11 the amount that the bank had appraised the building 10:04:48</p> <p>12 for was 189, and I had 30 down, and the purchase price 10:04:54</p> <p>13 was 160. 10:05:00</p> <p>14 Later, in 2008, within months after purchasing 10:05:03</p> <p>15 the property, they reassessed the appraisal and 10:05:07</p> <p>16 appraised it at \$85,000. So we lost the \$30,000 that 10:05:14</p> <p>17 we put down plus the valuation which caused us to -- 10:05:20</p> <p>18 we had a line of credit that was based on having 10:05:27</p> <p>19 \$60,000 equity in the building, and that caused us to 10:05:31</p> <p>20 lose our line of credit. 10:05:35</p> <p>21 Q. And when you started working for 10:05:37</p> <p>22 Smith &amp; Wesson, you also owned a home in Ohio, right? 10:05:40</p> <p>23 A. Yes. 10:05:43</p> <p>24 Q. Did you try to sell it before you started 10:05:44</p> <p>25 working for Smith &amp; Wesson? 10:05:46</p>
27	29
<p>1 company I sold to didn't want. 10:02:51</p> <p>2 Q. And what did you sell the company -- what 10:02:53</p> <p>3 was the amount that you sold the company for? 10:02:56</p> <p>4 A. Fifty thousand. 10:02:57</p> <p>5 Q. And what did you sell the various pieces of 10:02:59</p> <p>6 equipment for in total? 10:03:03</p> <p>7 A. I negotiated the purchase of these things 10:03:04</p> <p>8 for the company that purchased it, but I did not 10:03:09</p> <p>9 receive any of the proceeds. So I facilitated that 10:03:14</p> <p>10 for the purchaser, but he got, anything that these 10:03:18</p> <p>11 other competitors bought, the proceeds of that went to 10:03:23</p> <p>12 the company that was purchasing. 10:03:26</p> <p>13 Q. And the shop that you maintained at Lake 10:03:30</p> <p>14 Tool, you said it was like 48 feet by 48 feet, did you 10:03:34</p> <p>15 own or rent that at the time? 10:03:37</p> <p>16 A. Owned. 10:03:38</p> <p>17 Q. Okay. When did you buy it? 10:03:39</p> <p>18 A. I bought it in 2008. 10:03:41</p> <p>19 Q. And what did you buy it for in 2008? 10:03:44</p> <p>20 A. I bought it for 160 with a \$30,000 down 10:03:47</p> <p>21 payment. 10:03:56</p> <p>22 Q. And did you sell that also in March of 10:03:56</p> <p>23 2013? 10:04:01</p> <p>24 A. Well, let's see, no, not in March. 10:04:02</p> <p>25 Q. Okay. 10:04:06</p>	<p>1 A. The house? 10:05:47</p> <p>2 Q. Yes. 10:05:48</p> <p>3 A. There was a period we tried to sell the 10:05:50</p> <p>4 house. I don't know that we listed it, but we were 10:05:53</p> <p>5 speaking with the realtor about it, and we didn't know 10:05:59</p> <p>6 whether to rent or sell it. There wasn't a whole lot 10:06:03</p> <p>7 of time. 10:06:06</p> <p>8 Once we spoke to Smith &amp; Wesson, they gave me 10:06:07</p> <p>9 one month to liquidate everything, and they wanted me 10:06:13</p> <p>10 on site by March 23rd. So it didn't leave us a whole 10:06:18</p> <p>11 lot of time. 10:06:23</p> <p>12 Q. And so you elected to rent it; is that 10:06:25</p> <p>13 right? 10:06:28</p> <p>14 A. Yes. 10:06:28</p> <p>15 Q. And did you in fact rent it? 10:06:29</p> <p>16 A. Yes. My daughter, who was going to school, 10:06:30</p> <p>17 her and my son-in-law lived there with my 10:06:40</p> <p>18 grandchildren, and they paid a partial rent. It 10:06:45</p> <p>19 didn't cover the expense -- or it didn't cover the 10:06:49</p> <p>20 full amount, but they paid what they could afford 10:06:52</p> <p>21 while she was in college. 10:06:54</p> <p>22 Q. And what amount did they pay in rent? 10:06:56</p> <p>23 A. I really don't recall. My wife would know. 10:07:00</p> <p>24 Q. We were looking at Exhibit 1, which is the 10:07:05</p> <p>25 offer letter that you received from Smith &amp; Wesson. 10:07:08</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

9 (Pages 30 to 33)

30	32
<p>1 If you look at the third paragraph, it talks about 10:07:11</p> <p>2 relocation benefits that were offered to you. 10:07:14</p> <p>3 <b>A. Okay.</b> 10:07:23</p> <p>4 Q. And did you submit your relocation expenses 10:07:23</p> <p>5 to the company? 10:07:25</p> <p>6 <b>A. Yes.</b> 10:07:26</p> <p>7 Q. What -- what expenses did you seek, what 10:07:26</p> <p>8 amount? 10:07:28</p> <p>9 <b>A. They had a relocation coordinator that was 10:07:29</b></p> <p>10 assigned to me, and she would -- she disbursed the 10:07:34</p> <p>11 amounts. It was -- it was an initial amount for 10:07:39</p> <p>12 incidental expenses, and then she coordinated a moving 10:07:46</p> <p>13 truck to come pack the stuff and move it. They also 10:07:51</p> <p>14 procured a place for me to stay for the first month, 10:07:54</p> <p>15 and they furnished it with furnishings. And I then 10:07:59</p> <p>16 later rented from that. And also paid for some 10:08:07</p> <p>17 storage fee. But that was all coordinated through the 10:08:12</p> <p>18 relocation coordinator. 10:08:16</p> <p>19 Q. And you understood that if you were 10:08:20</p> <p>20 involuntarily terminated -- involuntarily terminated 10:08:25</p> <p>21 or if you resigned, that you would have to pay back 10:08:29</p> <p>22 the relocation expenses to the company; is that right? 10:08:32</p> <p>23 <b>A. Within a certain time frame, yes.</b> 10:08:35</p> <p>24 Q. Okay. And what was your understanding of 10:08:37</p> <p>25 what your liability would have been if you had left 10:08:39</p>	<p>1 <b>A. I did.</b> 10:10:05</p> <p>2 Q. And did you view it as a second chance for 10:10:05</p> <p>3 you and your wife? 10:10:08</p> <p>4 <b>A. "Second chance," I don't understand that, 10:10:09</b></p> <p>5 what you're asking. 10:10:12</p> <p>6 Q. Did you view the move and the job as a 10:10:13</p> <p>7 second chance for you and your wife because of the 10:10:18</p> <p>8 financial circumstances you were in in Ohio? 10:10:20</p> <p>9 <b>A. No, those terms "second chance" implies 10:10:23</b></p> <p>10 that we had blown the first chance and were looking 10:10:29</p> <p>11 for a second opportunity. I had -- we have been 10:10:34</p> <p>12 married now for 43 years, and it was more of a 10:10:41</p> <p>13 situation that put strain on my wife because she 10:10:45</p> <p>14 wasn't necessarily happy leaving the home that we 10:10:52</p> <p>15 raised all our children in and we had lived in for 30 10:10:56</p> <p>16 some years. 10:11:02</p> <p>17 There was a comfort factor that, if anything, 10:11:03</p> <p>18 it was a situation that maybe was a negative for my 10:11:08</p> <p>19 wife, but, you know, we -- we do everything together, 10:11:18</p> <p>20 so it was an opportunity for her to -- her and I to 10:11:23</p> <p>21 experience some different things and live in a 10:11:28</p> <p>22 different part of the country, but change like that is 10:11:31</p> <p>23 never a comfortable thing. We were more comfortable 10:11:33</p> <p>24 where we were. 10:11:36</p> <p>25 Q. And what was your financial situation as of 10:11:37</p>
31	33
<p>1 Smith &amp; Wesson within that period of time? 10:08:42</p> <p>2 <b>A. What was the question again?</b> 10:08:45</p> <p>3 Q. What was your understanding of the amount 10:08:48</p> <p>4 that you would owe Smith &amp; Wesson if you voluntarily 10:08:50</p> <p>5 resigned within that time period? 10:08:53</p> <p>6 <b>A. My understanding? I really didn't -- I 10:08:55</b></p> <p>7 didn't think in those terms, so I really -- I couldn't 10:09:01</p> <p>8 tell you. 10:09:06</p> <p>9 Q. Do you know whether it would have been in 10:09:08</p> <p>10 excess of \$10,000? 10:09:09</p> <p>11 <b>A. It probably would have.</b> 10:09:11</p> <p>12 Q. In excess of \$20,000? 10:09:12</p> <p>13 <b>A. I'm unsure.</b> 10:09:24</p> <p>14 Q. When you were working with Smith &amp; Wesson, 10:09:25</p> <p>15 did you ever consider the fact that you would owe the 10:09:26</p> <p>16 company money if you decided to resign from your 10:09:29</p> <p>17 position within that specified period of time? 10:09:32</p> <p>18 <b>A. I may have, but, like I say, I'm -- I think 10:09:34</b></p> <p>19 of positive things, so I didn't really dwell on the 10:09:37</p> <p>20 negative aspects. Maybe at times I thought about it, 10:09:43</p> <p>21 just because it's prudent to look at all things, but 10:09:48</p> <p>22 that wasn't something that I spent a great deal of 10:09:52</p> <p>23 time thinking about. 10:09:55</p> <p>24 Q. And did you consider the job at 10:09:56</p> <p>25 Smith &amp; Wesson to be a dream job for you? 10:09:59</p>	<p>1 March of 2013? 10:11:41</p> <p>2 MR. LEE: Objection to the form of the 10:11:44</p> <p>3 question, but you may answer. 10:11:45</p> <p>4 <b>A. Like I was saying, 40 some years, there are 10:11:48</b></p> <p>5 ups and downs. I think that we were in a period where 10:11:54</p> <p>6 there was a downturn, but we were recovering from the 10:12:02</p> <p>7 -- we certainly weren't at the bottom at the time 10:12:08</p> <p>8 Smith &amp; Wesson contacted us. 10:12:12</p> <p>9 So we had a downturn, when my son found 10:12:13</p> <p>10 employment someplace else, he was valuable to the 10:12:18</p> <p>11 company, and we lost some revenue because of that. 10:12:22</p> <p>12 But, with that said, we started rebounding from that 10:12:26</p> <p>13 period, and as Joe gained experience and got better at 10:12:30</p> <p>14 what he was doing, our revenue started coming right 10:12:37</p> <p>15 back up. 10:12:42</p> <p>16 So I don't look at it in terms of we were 10:12:42</p> <p>17 backed into a corner type of thing. We were in a 10:12:48</p> <p>18 field that was retracting in that the sharpening of 10:12:53</p> <p>19 tools was being done less and less and more companies 10:12:57</p> <p>20 were going to indexable tools, meaning the portion 10:13:01</p> <p>21 that got dull, you could unbolt it and bolt in another 10:13:05</p> <p>22 insert that would be sharp again. 10:13:09</p> <p>23 So as that field of indexable inserts grew, 10:13:12</p> <p>24 Lake Tool would, for that type of business, would 10:13:18</p> <p>25 retract. So it was more of a situation of looking 10:13:22</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 down the road and saying I would probably have enough 10:13:26</p> <p>2 business for a small shop that, regardless of industry 10:13:30</p> <p>3 trends, I would be fine, but it was an opportunity to 10:13:34</p> <p>4 work with a manufacturer that I somewhat idolized, and 10:13:39</p> <p>5 it would be in my skill set as far as I thought it 10:13:47</p> <p>6 would be a very good fit for them and for me. 10:13:53</p> <p>7 Q. And what was your net worth as of March of 10:13:56</p> <p>8 2012? 10:13:59</p> <p>9 MR. LEE: Objection to the form of the 10:14:00</p> <p>10 question, but you may answer. 10:14:01</p> <p>11 A. I really couldn't say. It wasn't something 10:14:02</p> <p>12 that we -- that we calculated. Some people are all 10:14:05</p> <p>13 about what they own, what their net worth is. We -- I 10:14:09</p> <p>14 really couldn't tell you what it was at that point. 10:14:19</p> <p>15 Q. Let me have you look at Exhibit 2, which is 10:14:21</p> <p>16 a Smith &amp; Wesson document with the title Cell 10:14:27</p> <p>17 Coordinator. 10:14:30</p> <p>18 (Exhibit 2 previously marked 10:14:32</p> <p>19 for identification and referenced</p> <p>20 herein: Cell Coordinator</p> <p>21 TELG_001538 - TELG_001540) 10:14:32</p> <p>22 Q. Have you ever seen Exhibit 2 before? 10:14:32</p> <p>23 A. I have. 10:14:34</p> <p>24 Q. Did you see it while you were employed with 10:14:35</p> <p>25 Smith &amp; Wesson? 10:14:38</p>	<p style="text-align: right;">36</p> <p>1 So Stanley was tasked with trying to make sure 10:16:17</p> <p>2 that there was no lag in the successes he had to when 10:16:20</p> <p>3 I took over. So it was more of a role in maintaining 10:16:28</p> <p>4 it the way that it was. But I wasn't received -- or 10:16:32</p> <p>5 didn't receive any mandate at that time to change what 10:16:37</p> <p>6 they considered to be successful. 10:16:41</p> <p>7 Q. And how did you learn to maintain the pitch 10:16:45</p> <p>8 boards? 10:16:52</p> <p>9 A. At the time I started, Stanley did not 10:16:53</p> <p>10 maintain them but Mike Jurga did. And then before 10:16:56</p> <p>11 Mike Jurga took over, there was a gentleman named Chet 10:17:01</p> <p>12 Liska that -- he must have retired shortly before I 10:17:05</p> <p>13 started, because Chet would come in, and I became 10:17:10</p> <p>14 acquainted with Chet, you know, on his visits, but 10:17:13</p> <p>15 Chet Liska maintained the boards for Stanley prior to 10:17:17</p> <p>16 Mike Jurga taking over. 10:17:22</p> <p>17 So when I first came on, it wasn't necessarily 10:17:25</p> <p>18 a function that Stanley himself performed but that 10:17:30</p> <p>19 Mike had. And since Mike was staying there, there 10:17:34</p> <p>20 wasn't a great emphasis put on me maintaining the 10:17:37</p> <p>21 board. However, when Flatley became -- interacted 10:17:41</p> <p>22 with me personally, it seemed evident that he wanted 10:17:49</p> <p>23 me to maintain the board as opposed to Jurga, so I 10:17:53</p> <p>24 started taking over those jobs from Mike. So it was 10:17:57</p> <p>25 something that Mike Jurga, Dan Durrand, and myself did 10:18:03</p>
<p style="text-align: right;">35</p> <p>1 A. I may have. 10:14:40</p> <p>2 Q. And was it your understanding that this was 10:14:49</p> <p>3 the job description for your position as cell 10:14:51</p> <p>4 coordinator? 10:14:55</p> <p>5 A. It appears to be, yes. 10:15:01</p> <p>6 Q. And when you first started working for 10:15:04</p> <p>7 Smith &amp; Wesson, your predecessor was Stanley Wnuk, 10:15:07</p> <p>8 W-N-U-K? 10:15:14</p> <p>9 A. Yes. 10:15:15</p> <p>10 Q. Is that right? 10:15:15</p> <p>11 A. Wnuk, yes. 10:15:16</p> <p>12 Q. Wnuk. When you first started, you worked 10:15:18</p> <p>13 with Mr. Wnuk for about three months; is that right? 10:15:22</p> <p>14 A. Yes. 10:15:26</p> <p>15 Q. And you said before that you had not worked 10:15:26</p> <p>16 with pitch boards before. Did Mr. Wnuk or other 10:15:29</p> <p>17 Smith &amp; Wesson employees provide training to you on 10:15:35</p> <p>18 how to prepare the pitch boards? 10:15:38</p> <p>19 A. Yes. My initial role in hiring, there's 10:15:40</p> <p>20 normally a period where you're given the scope of what 10:15:46</p> <p>21 your company is trying to do by your hiring, 10:15:52</p> <p>22 whether -- whether you're being brought into overall 10:15:58</p> <p>23 the department, maintain, improve. And the mandate I 10:16:03</p> <p>24 was given when I started was to maintain what they 10:16:08</p> <p>25 considered to be a successful department. 10:16:12</p>	<p style="text-align: right;">37</p> <p>1 jointly every morning. 10:18:11</p> <p>2 Q. When did -- you said at some point Larry 10:18:18</p> <p>3 started interacting with you directly. When did he 10:18:20</p> <p>4 first start interacting with you directly? 10:18:22</p> <p>5 A. Just on a daily basis, every morning at the 10:18:25</p> <p>6 exact same time, and then we also had a meeting once a 10:18:29</p> <p>7 week. But it was just, rather than directing 10:18:35</p> <p>8 questions to Mike, he was directing questions to me. 10:18:38</p> <p>9 And, you know, he would tell me, okay, I want this 10:18:45</p> <p>10 done this way, I want this done differently, but he 10:18:51</p> <p>11 wasn't directing that to Mike, he was directing that 10:18:55</p> <p>12 to me. 10:18:59</p> <p>13 So gradually I just took ownership and started 10:19:00</p> <p>14 doing it, but, again, it was -- everything that we did 10:19:04</p> <p>15 in the cutter department was a joint venture. So even 10:19:07</p> <p>16 though I say "I," I didn't personally do all those 10:19:12</p> <p>17 things. That was Mike Jurga, Dan Durrand, and myself. 10:19:16</p> <p>18 Q. And did your interactions with Mr. Flatley 10:19:21</p> <p>19 increase after Mr. Wnuk left? 10:19:27</p> <p>20 A. Did they increase? No. The same situation 10:19:30</p> <p>21 we had, interactions we had with Stanley, met him once 10:19:37</p> <p>22 a day during that what they called a Gamba Walk, 10:19:43</p> <p>23 that's where they review the boards. He dealt with 10:19:48</p> <p>24 Stanley there. He had a staff meeting once a week. 10:19:52</p> <p>25 We had a once-a-week vendor meeting and a once-a-week 10:19:56</p>

Baker, Earl Donald

August 14, 2020

11 (Pages 38 to 41)

38	40
<p>1 meeting in his office. And he maintained the same 10:20:02</p> <p>2 frequency with me after Stanley left. 10:20:08</p> <p>3 Q. Okay. And did you participate in those 10:20:11</p> <p>4 meetings before Stanley left? 10:20:14</p> <p>5 A. Yes. We did together. We went -- so all 10:20:16</p> <p>6 of those same meetings, Stanley never met with 10:20:22</p> <p>7 Mr. Flatley on those scheduled meetings by himself. 10:20:28</p> <p>8 So I'm not saying that they didn't ever meet on 10:20:34</p> <p>9 their -- without me there, but all of those -- at 10:20:38</p> <p>10 least all of those scheduled meetings that were 10:20:42</p> <p>11 scheduled for Stanley I was at -- I was at that 10:20:45</p> <p>12 meeting. 10:20:51</p> <p>13 Q. So you also started working with RoboCrib 10:20:51</p> <p>14 once you started with your position as a cell 10:20:56</p> <p>15 coordinator, right? 10:21:00</p> <p>16 A. Yes. 10:21:02</p> <p>17 Q. And how did you learn to work with the 10:21:02</p> <p>18 RoboCrib? 10:21:05</p> <p>19 A. There was a -- there were problems when I 10:21:06</p> <p>20 came in, in that they didn't -- they hadn't even 10:21:14</p> <p>21 inventoried the Crib 99, which is not necessarily a 10:21:19</p> <p>22 vending machine, it's just a big room that resembled a 10:21:23</p> <p>23 cage. 10:21:28</p> <p>24 So they didn't know how many tools they had. 10:21:28</p> <p>25 They weren't inventoried. They didn't have them 10:21:32</p>	<p>1 Q. How many RoboCrib were you responsible for 10:23:07</p> <p>2 as the cell coordinator? 10:23:10</p> <p>3 A. All of them. 10:23:14</p> <p>4 Q. Okay. And how many were there? 10:23:15</p> <p>5 A. I believe we had 13 -- 13 vending machine 10:23:17</p> <p>6 RoboCrib, and then Crib 99, which was not a vending 10:23:27</p> <p>7 machine. 10:23:30</p> <p>8 Q. Right. So in the -- in the RoboCrib for 10:23:31</p> <p>9 the third-party tools, did you come to learn that 10:23:34</p> <p>10 certain of them were there on consignment? 10:23:37</p> <p>11 A. We learned that day one. 10:23:39</p> <p>12 Q. Okay. How did you learn that? 10:23:45</p> <p>13 MR. LEE: Objection to the form of the 10:23:47</p> <p>14 question, but you may answer. 10:23:48</p> <p>15 A. Again, it's a function of our job, you 10:23:50</p> <p>16 know, how the system works and what tools belong to 10:23:56</p> <p>17 MSC, how the vending machine works. You learn that 10:24:02</p> <p>18 day one, because right now -- or as you vended the 10:24:06</p> <p>19 tool, then it becomes an invoice instantly. 10:24:12</p> <p>20 So our tools, when we put them in, we put them 10:24:15</p> <p>21 in in a different fashion so that we weren't charged 10:24:20</p> <p>22 for them when they were vended out. 10:24:23</p> <p>23 So, again, as a function of the job, that was 10:24:26</p> <p>24 90 percent of what we did. So you learned that day 10:24:31</p> <p>25 one. That's like -- without having that knowledge, 10:24:35</p>
39	41
<p>1 computerized. And they had boxes stacked probably 10:21:37</p> <p>2 four boxes high on top of the shelves that they 10:21:41</p> <p>3 hadn't -- they had no idea what was in them. 10:21:45</p> <p>4 So we had to get an idea of what tools we had. 10:21:48</p> <p>5 The system when we got there was to make tools as we 10:21:56</p> <p>6 ran out. We'd have the stock out. We would try to 10:22:02</p> <p>7 get the stock out taken care of. 10:22:07</p> <p>8 So there was not a -- I learned the system of 10:22:11</p> <p>9 the RoboCrib as a daily way to -- to get -- inventory 10:22:14</p> <p>10 what we had. 10:22:24</p> <p>11 Q. You mentioned the RoboCrib were different 10:22:26</p> <p>12 than Crib 99, right? 10:22:29</p> <p>13 A. Yes. 10:22:30</p> <p>14 Q. They're almost like vending machine 10:22:31</p> <p>15 dispensers for tooling, cutter tools, right? 10:22:33</p> <p>16 A. Yes. 10:22:38</p> <p>17 Q. And it was a combination of tools that 10:22:39</p> <p>18 Smith &amp; Wesson made itself and then tools of MSC and 10:22:44</p> <p>19 Pioneer, correct? 10:22:48</p> <p>20 A. Yes. Lindco as well. 10:22:49</p> <p>21 Q. Okay. And how many RoboCrib were there in 10:22:52</p> <p>22 the cutting department? 10:22:55</p> <p>23 A. In the cutting department? None. 10:22:56</p> <p>24 Q. Yes, in the cutting department. 10:23:03</p> <p>25 A. There were none. 10:23:05</p>	<p>1 you couldn't -- you couldn't work -- you couldn't do 10:24:39</p> <p>2 your job. 10:24:43</p> <p>3 Q. And you also understood when you first 10:24:44</p> <p>4 started working for Smith &amp; Wesson that there were two 10:24:47</p> <p>5 primary vendors of cutting tools, correct? 10:24:50</p> <p>6 A. Yes. 10:24:53</p> <p>7 Q. And that was Pioneer and MSC, correct? 10:24:53</p> <p>8 A. Yes. 10:24:57</p> <p>9 Q. And did you understand why there were two 10:24:57</p> <p>10 primary vendors of cutting tools? 10:25:02</p> <p>11 A. Yes. 10:25:04</p> <p>12 Q. What was your understanding? 10:25:05</p> <p>13 A. It was that in order to keep from having so 10:25:06</p> <p>14 many different vendors you'd spend -- if you were 10:25:16</p> <p>15 trying to get the lowest price to the penny, you might 10:25:20</p> <p>16 have to review hundreds of vendors. There were tons 10:25:23</p> <p>17 of vendors. 10:25:26</p> <p>18 So in order to streamline the system, you would 10:25:27</p> <p>19 have two main vendors and then a number of ancillary 10:25:32</p> <p>20 or specialized vendors that would do specialized work. 10:25:35</p> <p>21 So as much as could be done, the bulk of that work 10:25:41</p> <p>22 would go through those two main vendors. 10:25:46</p> <p>23 Q. And did you ever see the Alvarez &amp; Marsal 10:25:49</p> <p>24 study and report concerning tooling? 10:25:54</p> <p>25 A. Have I ever seen it? Yes. 10:25:58</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 Q. Did you see it while you were employed by 10:26:01</p> <p>2 Smith &amp; Wesson? 10:26:03</p> <p>3 <b>A. I can't say. I don't recall ever seeing</b> 10:26:06</p> <p>4 <b>it.</b> 10:26:08</p> <p>5 Q. Okay. Did anybody tell you about it while 10:26:08</p> <p>6 you were employed at Smith &amp; Wesson? 10:26:11</p> <p>7 <b>A. Alvarez &amp; Marsal, no, I don't believe so.</b> 10:26:12</p> <p>8 Q. And was it your understanding that MSC and 10:26:19</p> <p>9 Pioneer signed letters of intent with Smith &amp; Wesson? 10:26:23</p> <p>10 <b>A. Yes.</b> 10:26:27</p> <p>11 Q. Did you ever see those letters of intent? 10:26:27</p> <p>12 <b>A. Yes.</b> 10:26:32</p> <p>13 Q. And when did you first see those? 10:26:35</p> <p>14 <b>A. I can't say for sure, but my -- I really</b> 10:26:37</p> <p>15 <b>can't say for sure. I'm not sure the first time I saw</b> 10:26:44</p> <p>16 <b>it.</b> 10:26:46</p> <p>17 Q. But you were employed by Smith &amp; Wesson, 10:26:48</p> <p>18 right? 10:26:51</p> <p>19 <b>A. I believe so.</b> 10:26:53</p> <p>20 Q. Okay. And you understood that Pioneer and 10:26:54</p> <p>21 MSC were distributors of tools, not manufacturers, 10:26:58</p> <p>22 right? 10:27:02</p> <p>23 <b>A. That's not necessarily true.</b> 10:27:03</p> <p>24 Q. Why not? 10:27:06</p> <p>25 <b>A. I visited both of their facilities to see</b> 10:27:08</p>	<p style="text-align: right;">44</p> <p>1 <b>be -- that can be attained through just Googling on</b> 10:29:10</p> <p>2 <b>EASTEC Trade Show.</b> 10:29:15</p> <p>3 Q. And but you did have some challenges with 10:29:16</p> <p>4 Mr. Flatley in around mid April of 2013, right? 10:29:20</p> <p>5 MR. LEE: Objection to form. Objection to 10:29:28</p> <p>6 the form of the question, but you may answer. 10:29:30</p> <p>7 Q. Let me restate it in case there's any 10:29:32</p> <p>8 confusion. 10:29:34</p> <p>9 You did have some challenges with Mr. Flatley's 10:29:35</p> <p>10 management style by at least mid April of 2013, right? 10:29:40</p> <p>11 MR. LEE: Objection to the form of the 10:29:44</p> <p>12 question, but you may answer. 10:29:45</p> <p>13 <b>A. When you say "challenges," if you're</b> 10:29:48</p> <p>14 <b>working with any individual, you -- there are</b> 10:29:52</p> <p>15 <b>challenges. Like I said, I have a successful</b> 10:29:58</p> <p>16 <b>marriage, but to say that -- there are challenges with</b> 10:30:02</p> <p>17 <b>that. There are interpersonal styles that you have to</b> 10:30:07</p> <p>18 <b>adapt to, and it's a relationship like any other.</b> 10:30:13</p> <p>19 <b>But as far as were there negative aspects that</b> 10:30:16</p> <p>20 <b>sent up flags, no. We had a good working</b> 10:30:24</p> <p>21 <b>relationship, and you can see through the review that</b> 10:30:29</p> <p>22 <b>took place in around that time frame, in July -- in</b> 10:30:36</p> <p>23 <b>June or July of 2013, he sent me his expectations in</b> 10:30:42</p> <p>24 <b>every aspect. So we didn't have a bad relationship.</b> 10:30:47</p> <p>25 <b>As a matter of fact, I was struck with the fact</b> 10:30:53</p>
<p style="text-align: right;">43</p> <p>1 <b>their manufacturing capabilities so that they were</b> 10:27:13</p> <p>2 <b>distributors and they also both had a manufacturing</b> 10:27:17</p> <p>3 <b>facility where they made tools, yes.</b> 10:27:23</p> <p>4 Q. And there were certain other companies like 10:27:25</p> <p>5 Pacific that were just manufacturers, right? 10:27:29</p> <p>6 <b>A. I don't necessarily agree with your term</b> 10:27:32</p> <p>7 <b>"just manufacturers." I think they also, much like</b> 10:27:41</p> <p>8 <b>Lake Tool, marketed their product, and they were --</b> 10:27:44</p> <p>9 <b>did not go through, exclusively, through a</b> 10:27:48</p> <p>10 <b>distributor. We dealt with them directly, but yet</b> 10:27:56</p> <p>11 <b>they manufacture tools just like Pioneer and MSC.</b> 10:27:59</p> <p>12 Q. What was your relationship like with 10:28:05</p> <p>13 Mr. Flatley when you first arrived at Smith &amp; Wesson? 10:28:11</p> <p>14 <b>A. Well, very good, I would say.</b> 10:28:14</p> <p>15 Q. Uh-huh. And did it change at some point? 10:28:18</p> <p>16 <b>A. Yes.</b> 10:28:21</p> <p>17 Q. And when was that? 10:28:23</p> <p>18 <b>A. I can't say that it changed abruptly, but</b> 10:28:25</p> <p>19 <b>there was a period around the EASTEC -- when the</b> 10:28:33</p> <p>20 <b>EASTEC Trade Show began where I noticed that's when it</b> 10:28:42</p> <p>21 <b>first started to change.</b> 10:28:46</p> <p>22 Q. When was the EASTEC event? 10:28:49</p> <p>23 <b>A. Should have been -- I'm not positive. I'd</b> 10:28:52</p> <p>24 <b>say June-ish of 2013. It would have been in the late</b> 10:28:58</p> <p>25 <b>spring, early -- early summer, but that -- that can</b> 10:29:05</p>	<p style="text-align: right;">45</p> <p>1 <b>that we went to a restaurant, and I know it's a</b> 10:30:55</p> <p>2 <b>strange thing, but Mr. Flatley ordered elk. I</b> 10:31:00</p> <p>3 <b>commented that I wasn't an adventure seeker, and I</b> 10:31:08</p> <p>4 <b>thought it odd that he actually cut a piece of elk</b> 10:31:12</p> <p>5 <b>with his knife and fork and handed it to me and wanted</b> 10:31:16</p> <p>6 <b>me to try the elk, and I thought that was very</b> 10:31:21</p> <p>7 <b>personal. But I think it was indicative of the</b> 10:31:24</p> <p>8 <b>relationship that we had at that time.</b> 10:31:27</p> <p>9 <b>He was a difficult person to deal with in his</b> 10:31:29</p> <p>10 <b>management style. Every one of his managers had</b> 10:31:35</p> <p>11 <b>voiced it to me at some point. But I don't believe I</b> 10:31:38</p> <p>12 <b>had any different relationship with Mr. Flatley than</b> 10:31:42</p> <p>13 <b>any of his other CCs that worked for him.</b> 10:31:46</p> <p>14 Q. And was that true throughout your 10:31:51</p> <p>15 employment? 10:31:53</p> <p>16 <b>A. No, it was not.</b> 10:31:54</p> <p>17 Q. And when did that change? 10:31:57</p> <p>18 MR. LEE: Objection to the form of the 10:32:01</p> <p>19 question, but you may answer. 10:32:02</p> <p>20 <b>A. Again, I said that started to change right</b> 10:32:04</p> <p>21 <b>around the EASTEC Trade Show, and it was a gradual</b> 10:32:07</p> <p>22 <b>progression.</b> 10:32:11</p> <p>23 Q. Let me refer you to Exhibit 3, which is 10:32:11</p> <p>24 April 15, 2013 Facebook post by you. 10:32:15</p> <p>25 (Exhibit 3 previously marked 10:32:19</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 for identification and referenced</p> <p>2 herein: April 15, 2013 Facebook post) 10:32:19</p> <p>3 Q. And in it you reference getting rated by 10:32:19</p> <p>4 Bill Marshall about evaluating your direct supervisor. 10:32:23</p> <p>5 Who is Bill Marshall? 10:32:27</p> <p>6 <b>A. My cousin.</b> 10:32:29</p> <p>7 Q. And why did you need advice from him about 10:32:32</p> <p>8 your direct supervisor? 10:32:34</p> <p>9 <b>A. I didn't need advice from him.</b> 10:32:35</p> <p>10 Q. Did you seek advice from him on anything, 10:32:45</p> <p>11 on any topic? 10:32:47</p> <p>12 <b>A. No, not really. I don't believe so. But I</b> 10:32:48</p> <p>13 <b>do know that Bill is someone I respect. He's a plant</b> 10:32:52</p> <p>14 <b>manager at a shop in New York, was successful in his</b> 10:32:58</p> <p>15 <b>business, and he feels that, because of my</b> 10:33:04</p> <p>16 <b>relationship and that I'm open to input, that he</b> 10:33:07</p> <p>17 <b>shared with me that, if you were making a move, the</b> 10:33:11</p> <p>18 <b>one thing that -- one factor he would look at was your</b> 10:33:18</p> <p>19 <b>relationship with your immediate supervisor, and I</b> 10:33:25</p> <p>20 <b>thought that was good advice.</b> 10:33:27</p> <p>21 Q. And how did that make a huge difference in 10:33:30</p> <p>22 how -- how much you enjoyed your job? 10:33:35</p> <p>23 MR. LEE: Objection to the form of the 10:33:38</p> <p>24 question, but you may answer. 10:33:39</p> <p>25 <b>A. I feel like I did evaluate the fact -- I</b> 10:33:40</p>	<p style="text-align: right;">48</p> <p>1 <b>you want to be accurate.</b> 10:35:21</p> <p>2 Q. But you feel that you got the asking price 10:35:24</p> <p>3 for the business? 10:35:26</p> <p>4 <b>A. I got what I offered -- or asked -- was the</b> 10:35:28</p> <p>5 <b>offering price.</b> 10:35:33</p> <p>6 Q. So you spoke with the competitor and said 10:35:34</p> <p>7 I'll sell you the business for \$50,000 and they 10:35:37</p> <p>8 agreed -- 10:35:41</p> <p>9 <b>A. Yes.</b> 10:35:41</p> <p>10 Q. -- is that right? Okay. 10:35:41</p> <p>11 You suggested this earlier, but did some other 10:35:45</p> <p>12 employees have difficulty working with Mr. Flatley as 10:35:48</p> <p>13 a manager? 10:35:52</p> <p>14 MR. LEE: Objection to the form of the 10:35:53</p> <p>15 question, but you may answer. 10:35:55</p> <p>16 <b>A. They had expressed they had.</b> 10:35:56</p> <p>17 Q. Okay. And what kinds of difficulties did 10:36:00</p> <p>18 they tell you that they were having with Mr. Flatley's 10:36:03</p> <p>19 management? 10:36:06</p> <p>20 <b>A. Tony Martin or Tony Nelson told me when he</b> 10:36:08</p> <p>21 <b>first was here that he felt Larry was -- rode him</b> 10:36:14</p> <p>22 <b>harder than the other CCs. Tony was younger, and I</b> 10:36:22</p> <p>23 <b>don't know if that was a factor, but he said that</b> 10:36:29</p> <p>24 <b>Larry was pretty harsh with him and that he had</b> 10:36:32</p> <p>25 <b>somewhat leveled out and wasn't as bad.</b> 10:36:37</p>
<p style="text-align: right;">47</p> <p>1 thought Larry was intelligent and that we had a 10:33:49</p> <p>2 relationship where I had strengths in one area, he had 10:33:55</p> <p>3 strengths in another, and that, if we interacted in 10:34:01</p> <p>4 the way a manager and a subordinate should, I think we 10:34:05</p> <p>5 would make a formidable team. 10:34:10</p> <p>6 <b>And so, based on my initial assessment of</b> 10:34:12</p> <p>7 <b>Mr. Flatley, I felt like we were going to be a</b> 10:34:16</p> <p>8 <b>successful team, and I was glad that Bill had given me</b> 10:34:20</p> <p>9 <b>that advice.</b> 10:34:24</p> <p>10 Q. Turn to the next page of the Facebook post 10:34:26</p> <p>11 there saying -- the second post by you. It starts, 10:34:30</p> <p>12 "God worked out so many details." Is that a post that 10:34:37</p> <p>13 you made on Facebook? 10:34:39</p> <p>14 <b>A. Yes, it is.</b> 10:34:41</p> <p>15 Q. And you wrote that yourself? 10:34:41</p> <p>16 <b>A. I guess.</b> 10:34:44</p> <p>17 Q. And it says, "sold the business in two 10:34:45</p> <p>18 weeks and shop two weeks later." Was that an accurate 10:34:48</p> <p>19 statement -- accurate statement? 10:34:52</p> <p>20 <b>A. Yeah, I think so.</b> 10:34:54</p> <p>21 Q. And it says, "got asking price for both." 10:34:57</p> <p>22 Is that an accurate statement? 10:35:01</p> <p>23 <b>A. Yeah, I believe so. Well, no, I don't</b> 10:35:04</p> <p>24 <b>believe -- I don't think it is. When I say "two</b> 10:35:08</p> <p>25 <b>weeks," I did not get my asking price on the shop, if</b> 10:35:18</p>	<p style="text-align: right;">49</p> <p>1 Charlie had mentioned that Larry had multiple 10:36:42</p> <p>2 times forgotten when Charlie had asked for time off 10:36:49</p> <p>3 and that he said his process was that Larry would 10:36:54</p> <p>4 forget these details, so he had a habit of asking for 10:37:00</p> <p>5 the time, getting Larry to put it in writing, and then 10:37:05</p> <p>6 to remind him he would send emails two weeks out, one 10:37:09</p> <p>7 week out, and so forth, because Larry would invariably 10:37:13</p> <p>8 forget that he had given time off. 10:37:18</p> <p>9 He had also told me that Larry was constantly 10:37:20</p> <p>10 on him for missing meetings and that -- that Larry was 10:37:25</p> <p>11 kind of tough, but he had had his difficulties with 10:37:31</p> <p>12 him. 10:37:38</p> <p>13 Stanley Wnuk framed him as he didn't personally 10:37:38</p> <p>14 care for him, called him an SOB, but said that, 10:37:45</p> <p>15 generally speaking, Larry was tough but fair. But 10:37:52</p> <p>16 each one of them, with the exception of Dave 10:37:58</p> <p>17 Billingsly, had mentioned some tough interactions, 10:38:02</p> <p>18 some of which, you know, seven years later I can't 10:38:09</p> <p>19 recall, but they did give details that he had problems 10:38:12</p> <p>20 with -- they had problems with Larry at different 10:38:17</p> <p>21 points. 10:38:20</p> <p>22 Q. And Tony Nelson, Charlie Martin, and Dave 10:38:21</p> <p>23 Billingsly were all cell coordinators like you, right? 10:38:25</p> <p>24 <b>A. Yes. The ones that you mentioned, those</b> 10:38:30</p> <p>25 <b>comprised specialty services. So those were the cell</b> 10:38:35</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

14 (Pages 50 to 53)

50	52
<p>1 coordinators under Flatley. 10:38:39</p> <p>2 Q. And you mentioned this earlier, but you met 10:38:44</p> <p>3 with Mr. Flatley daily to review your pitch board, 10:38:47</p> <p>4 right? 10:38:50</p> <p>5 A. Yes. 10:38:50</p> <p>6 Q. And were other people there when -- when 10:38:51</p> <p>7 the two of you reviewed the pitch boards? 10:38:55</p> <p>8 A. Yes. 10:38:57</p> <p>9 Q. Who else was present? 10:38:57</p> <p>10 A. Mike -- there was, on the bottom of the 10:38:59</p> <p>11 pitch board, there's a sheet that states who is 10:39:04</p> <p>12 responsible for the board and who should be present. 10:39:08</p> <p>13 On that sheet was Dan Durrand, Mike Jurga, Derrick 10:39:12</p> <p>14 Hedley, and myself, and -- 10:39:21</p> <p>15 Q. What was Derrick's last name? 10:39:24</p> <p>16 A. Hedley, H-E-D-L-E-Y. 10:39:27</p> <p>17 MR. LEE: Sorry. Whenever is a good point, 10:39:31</p> <p>18 just a short break. 10:39:36</p> <p>19 MS. BERTRAM: Yeah, let's do that. 10:39:37</p> <p>20 MR. LEE: Is right now good or do you need 10:39:39</p> <p>21 -- do you want to wrap up a point or something? 10:39:41</p> <p>22 MS. BERTRAM: No, this is good. 10:39:43</p> <p>23 MR. LEE: Okay. About five minutes? 10:39:45</p> <p>24 VIDEO SPECIALIST: The time is 10:40 a.m. 10:39:48</p> <p>25 and we're off the record. 10:39:52</p>	<p>1 Q. Okay. And Mr. Flatley was there as well, 10:48:57</p> <p>2 right? 10:49:01</p> <p>3 A. Generally, yes. Again, maybe 95 percent. 10:49:02</p> <p>4 Q. And who else would attend the meetings 10:49:07</p> <p>5 other than the four individuals you've described? 10:49:14</p> <p>6 A. Sometimes Bob Francis, sometimes 10:49:15</p> <p>7 Mr. Fontaine. There were a couple other -- Bill Holt 10:49:24</p> <p>8 attended meetings, and sometimes other engineers, if 10:49:32</p> <p>9 there was a specific problem, Kris Gallant -- that's 10:49:37</p> <p>10 as many as I can think right now. 10:49:46</p> <p>11 MR. LEE: Can you spell Kris Gallant's 10:49:48</p> <p>12 name? 10:49:51</p> <p>13 A. Yes. It's unusual. I think it has a K -- 10:49:51</p> <p>14 K-R-I-S, and then G-A-L-I -- G-A-L-A-N-T, I believe. 10:49:54</p> <p>15 Q. And how often did Mr. Francis attend the 10:50:08</p> <p>16 pitch board meetings? 10:50:12</p> <p>17 A. How often? Occasionally. 10:50:14</p> <p>18 Q. More than once a week? 10:50:20</p> <p>19 A. No. 10:50:21</p> <p>20 Q. More than once a month? 10:50:23</p> <p>21 A. Probably no. 10:50:25</p> <p>22 Q. Probably what? 10:50:31</p> <p>23 A. Probably no. 10:50:32</p> <p>24 Q. Okay. So maybe every couple of months he 10:50:33</p> <p>25 attended? 10:50:36</p>
51	53
<p>1 (Proceedings recessed) 10:39:53</p> <p>2 VIDEO SPECIALIST: The time is 10:48 a.m. 10:47:57</p> <p>3 We're back on the record. 10:48:00</p> <p>4 BY MS. BERTRAM: 10:48:02</p> <p>5 Q. Mr. Baker, you said that there were others 10:48:03</p> <p>6 that were present for the pitch meetings. Those took 10:48:06</p> <p>7 place around 8:15 each morning, right? 10:48:12</p> <p>8 A. Yes. 10:48:14</p> <p>9 Q. And were Mr. Durrand, Mr. Jurga and Mr. 10:48:14</p> <p>10 Hedley always present with the pitch meetings with 10:48:20</p> <p>11 Mr. Flatley? 10:48:21</p> <p>12 A. No. 10:48:22</p> <p>13 Q. Pardon me? 10:48:22</p> <p>14 A. No. 10:48:23</p> <p>15 Q. Why not? 10:48:23</p> <p>16 MR. LEE: Object to the form of the 10:48:26</p> <p>17 question, but you may answer, if you know. 10:48:28</p> <p>18 A. Why Derrick Hedley wasn't there, I'm aware 10:48:30</p> <p>19 of what -- he probably missed 180 meetings in a year's 10:48:36</p> <p>20 time. 10:48:43</p> <p>21 Q. What about Mr. Durrand, was he always at 10:48:44</p> <p>22 the meetings? 10:48:47</p> <p>23 A. Not always but generally 90 percent. 10:48:48</p> <p>24 Q. And what about Mr. Jurga? 10:48:51</p> <p>25 A. I can't remember he ever missing one. 10:48:54</p>	<p>1 A. That's about right. 10:50:38</p> <p>2 Q. Okay. And what about Mr. Fontaine, how 10:50:40</p> <p>3 often did he attend the pitch board meetings? 10:50:42</p> <p>4 A. Very seldom until after February of 2014. 10:50:46</p> <p>5 Q. And let's focus on the period prior to 10:50:54</p> <p>6 February of 2014. How often did Mr. Fontaine attend 10:50:56</p> <p>7 the meetings, pitch board meetings? 10:51:02</p> <p>8 A. Rarely. 10:51:06</p> <p>9 Q. And how often did he attend after February 10:51:06</p> <p>10 2014? 10:51:09</p> <p>11 A. Fairly regularly. 10:51:15</p> <p>12 Q. Now the pitch board for the -- for the 10:51:18</p> <p>13 cutting department, what was it physically composed 10:51:21</p> <p>14 of? Was it wood or whiteboard? 10:51:25</p> <p>15 A. It would be a commercially purchased 10:51:32</p> <p>16 whiteboard, but it had plastic -- it wasn't just -- 10:51:37</p> <p>17 they started with that and then they added things to 10:51:45</p> <p>18 that. 10:51:48</p> <p>19 Q. Okay. And there were plastic sleeves that 10:51:48</p> <p>20 you could put different reports into, right? 10:51:52</p> <p>21 A. Correct. 10:51:54</p> <p>22 Q. And did you write on those reports during 10:51:55</p> <p>23 the course of a day or during the course of a week? 10:51:59</p> <p>24 A. No. That was updated every morning prior 10:52:03</p> <p>25 to the pitch board with the nightly numbers, because 10:52:07</p>

Baker, Earl Donald

August 14, 2020

15 (Pages 54 to 57)

54	56
<p>1 the night shift, we ran 24/7, so the night shift 10:52:15</p> <p>2 numbers wouldn't be available until the morning right 10:52:20</p> <p>3 before the pitch board. 10:52:24</p> <p>4 Q. So new sheets were put in each day; is that 10:52:26</p> <p>5 right? 10:52:33</p> <p>6 A. Yes. 10:52:33</p> <p>7 Q. And as things occurred during the course of 10:52:33</p> <p>8 the day they were updated in handwriting, right? 10:52:35</p> <p>9 A. No. 10:52:38</p> <p>10 Q. Were they -- were they ever updated? 10:52:38</p> <p>11 A. The first thing in the morning. 10:52:40</p> <p>12 Q. Okay. So there was no handwriting at all 10:52:43</p> <p>13 on your pitch board? 10:52:47</p> <p>14 A. There was some. 10:52:51</p> <p>15 Q. And which -- which reports on the pitch 10:52:54</p> <p>16 board were updated in handwriting? 10:52:57</p> <p>17 A. A-3 portion of the board. 10:53:00</p> <p>18 Q. And what information was added -- let me 10:53:05</p> <p>19 back up a little bit. What is the A-3 sheet? 10:53:07</p> <p>20 A. That would be your problem worksheet. 10:53:10</p> <p>21 Q. It identifies problems that have come up 10:53:19</p> <p>22 during the course of the workday? 10:53:21</p> <p>23 A. That's correct. 10:53:22</p> <p>24 Q. And what types of information would you add 10:53:22</p> <p>25 to it, the A-3? 10:53:26</p>	<p>1 that different? 10:54:46</p> <p>2 MR. LEE: Yeah. I mean, like Connie is in 10:54:48</p> <p>3 a bright room. I can see Connie much -- Connie and 10:54:50</p> <p>4 Jack much better, but you are definitely darker than 10:54:53</p> <p>5 Connie, for example, the room is -- just try different 10:54:58</p> <p>6 lighting. 10:55:02</p> <p>7 THE WITNESS: Okay. Hold on a second. 10:55:04</p> <p>8 VIDEO SPECIALIST: Do you want to go off</p> <p>9 the record?</p> <p>10 MS. BERTRAM: I don't think we need to.</p> <p>11 BY MS. BERTRAM:</p> <p>12 Q. So we were talking about pitch boards. You 10:55:25</p> <p>13 said that you were expected to update pitch boards 10:55:26</p> <p>14 daily, correct? 10:55:29</p> <p>15 A. Yes. 10:55:30</p> <p>16 Q. And at the end of the day what did you do 10:55:30</p> <p>17 with the reports that were slipped into the laminate 10:55:34</p> <p>18 sleeves? 10:55:36</p> <p>19 A. Nothing. 10:55:37</p> <p>20 Q. Were they ever removed? 10:55:39</p> <p>21 A. Yes. 10:55:45</p> <p>22 Q. By who? 10:55:47</p> <p>23 A. By me, and there was one occasion where I 10:55:49</p> <p>24 expected Mr. Flatley took sheets from the board. 10:55:56</p> <p>25 Q. And when you removed the sheets from the 10:56:03</p>
55	57
<p>1 A. A tool number, it might be being broken at 10:53:33</p> <p>2 a regular rate in a certain department, and you would 10:53:38</p> <p>3 write which engineer was over that department. So you 10:53:46</p> <p>4 would identify a problem and who the ownership of the 10:53:48</p> <p>5 solution to that problem would be. 10:53:54</p> <p>6 MS. BERTRAM: John, Mr. Baker, at least on 10:53:59</p> <p>7 my computer, is -- his image is very, very dark. Is 10:54:02</p> <p>8 that that way for you too? 10:54:07</p> <p>9 MR. LEE: That's very dark. I mean darker 10:54:09</p> <p>10 than you and darker than Linda. 10:54:18</p> <p>11 Earl, can you do something to bring more light 10:54:22</p> <p>12 into your room? 10:54:24</p> <p>13 THE WITNESS: Sure. 10:54:27</p> <p>14 MR. LEE: Either turn on the -- let's see</p> <p>15 if --</p> <p>16 THE WITNESS: I felt these might offer 10:54:27</p> <p>17 glare. 10:54:29</p> <p>18 MS. BERTRAM: Yeah, I think they would. It 10:54:29</p> <p>19 just -- it happened, I think maybe the sun went down 10:54:30</p> <p>20 outside or something like that in North Carolina, but 10:54:32</p> <p>21 -- or a big cloud came by. 10:54:36</p> <p>22 THE WITNESS: I started leaning back. 10:54:39</p> <p>23 MS. BERTRAM: Okay. I think that's -- I 10:54:41</p> <p>24 think that's the problem. 10:54:42</p> <p>25 THE WITNESS: See if I lean forward, is 10:54:43</p>	<p>1 board, where did you put them? 10:56:05</p> <p>2 A. In a file in my office. 10:56:08</p> <p>3 Q. And how was that file labeled? 10:56:11</p> <p>4 A. I can't remember after this many years, but 10:56:17</p> <p>5 it was labeled with a little tab at the top. It 10:56:20</p> <p>6 probably said one category for each different sleeve, 10:56:26</p> <p>7 which there were 24 sheets, so it would have been 10:56:32</p> <p>8 labeled pitch board, old pitch board, you know, I 10:56:35</p> <p>9 can't tell you what it was -- what the exact label 10:56:44</p> <p>10 was. 10:56:47</p> <p>11 Q. And do you know what the other cell 10:56:49</p> <p>12 coordinators who were supervised by Mr. Flatley, do 10:56:54</p> <p>13 you know what they did with their slips that were in 10:56:57</p> <p>14 the laminated packets along their pitch boards? 10:57:01</p> <p>15 A. No idea. 10:57:01</p> <p>16 Q. When was the last time you saw the file 10:57:03</p> <p>17 with the whole pitch board sheets? 10:57:05</p> <p>18 A. It would have been the last week I worked 10:57:11</p> <p>19 there. 10:57:13</p> <p>20 Q. And where were they at that point? 10:57:15</p> <p>21 A. In the credenza to the right of my desk on 10:57:18</p> <p>22 the far right-hand bottom drawer. 10:57:23</p> <p>23 Q. And did you ever remove any of those sheets 10:57:27</p> <p>24 and take them home with you? 10:57:30</p> <p>25 A. I have -- had some in my briefcase. We had 10:57:32</p>



Baker, Earl Donald

August 14, 2020

16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 to change the information on there at times, so it was 10:57:40</p> <p>2 a ongoing process, especially after February. 10:57:48</p> <p>3 Q. And Mr. Flatley met with the three other 10:57:53</p> <p>4 cell coordinators each morning as well, right? 10:57:59</p> <p>5 A. Yes. 10:58:03</p> <p>6 Q. And you weren't present when he met with 10:58:04</p> <p>7 the other cell coordinators to discuss their pitch 10:58:05</p> <p>8 boards, right? 10:58:09</p> <p>9 A. No. 10:58:10</p> <p>10 Q. And you don't have any personal knowledge 10:58:10</p> <p>11 of the discussions he had with them, right? 10:58:12</p> <p>12 A. No. 10:58:13</p> <p>13 Q. And as part of your work, did you ever go 10:58:14</p> <p>14 and review the pitch boards of the other cell 10:58:20</p> <p>15 coordinators? 10:58:27</p> <p>16 A. Yes. 10:58:27</p> <p>17 Q. How often did you do that? 10:58:28</p> <p>18 A. I would say probably once a month or -- it 10:58:30</p> <p>19 would vary. There were some periods of times when 10:58:36</p> <p>20 they were undergoing problems, particularly the 10:58:41</p> <p>21 departments where we would meet daily at the other 10:58:45</p> <p>22 boards. 10:58:47</p> <p>23 Q. Okay. And you indicated that you also met 10:58:47</p> <p>24 with Mr. Flatley once a week to discuss the 10:58:51</p> <p>25 performance of the cutting department, right? 10:58:54</p>	<p style="text-align: right;">60</p> <p>1 Q. Was it his practice to give you a copy or 11:00:28</p> <p>2 the original of the notes after each meeting? 11:00:31</p> <p>3 A. I can't say he did every time, but I would 11:00:42</p> <p>4 say frequently. 11:00:45</p> <p>5 Q. Who also attended the weekly meetings? 11:00:47</p> <p>6 A. Generally, it was just myself and him. 11:00:51</p> <p>7 Q. And where did the meetings take place? 11:00:53</p> <p>8 A. In Larry's office. 11:00:55</p> <p>9 Q. And would you agree that Mr. Flatley during 11:00:59</p> <p>10 those meetings pointed out projects that he expected 11:01:03</p> <p>11 you to lead? 11:01:08</p> <p>12 A. I wouldn't say that was a fair 11:01:12</p> <p>13 characterization. 11:01:15</p> <p>14 Q. You would say it would not be a fair 11:01:17</p> <p>15 characterization? 11:01:20</p> <p>16 A. It would not be, no. 11:01:20</p> <p>17 Q. Did he describe in his notes the projects 11:01:22</p> <p>18 that were pending for your department? 11:01:25</p> <p>19 A. Yes. 11:01:27</p> <p>20 Q. And did he raise concerns or complaints 11:01:29</p> <p>21 during those weekly meetings about your performance? 11:01:35</p> <p>22 A. No. 11:01:39</p> <p>23 Q. Pardon me? 11:01:40</p> <p>24 A. No. 11:01:41</p> <p>25 Q. So he never -- he never raised concerns 11:01:43</p>
<p style="text-align: right;">59</p> <p>1 A. No, that isn't right. 10:58:57</p> <p>2 Q. Did you meet with Mr. Flatley weekly? 10:59:02</p> <p>3 A. Yes. 10:59:05</p> <p>4 Q. And for what purpose? 10:59:06</p> <p>5 A. We discussed projects we were currently 10:59:07</p> <p>6 working on, and he would -- he would ask what issues 10:59:12</p> <p>7 we were working on, he would record them in his notes, 10:59:19</p> <p>8 and he would pull out those notes in a later time and 10:59:23</p> <p>9 update our progress on -- on those issues. 10:59:30</p> <p>10 Q. And he had a system for taking notes during 10:59:34</p> <p>11 those meetings, right? 10:59:37</p> <p>12 A. Yes. 10:59:38</p> <p>13 Q. And what was your understanding of his 10:59:39</p> <p>14 system? 10:59:41</p> <p>15 A. That he took notes, and then he would at 10:59:42</p> <p>16 times use different colors for when he would review 10:59:49</p> <p>17 those same topics from the week prior, but it wasn't 10:59:56</p> <p>18 every time. A lot of times he used just the same 10:59:59</p> <p>19 pencil, but he would date at the top his entries. 11:00:05</p> <p>20 Q. And did he ever provide to you a copy -- 11:00:10</p> <p>21 did he ever provide to you the actual notes that he 11:00:14</p> <p>22 had prepared? 11:00:17</p> <p>23 A. He provided copies and at times he did give 11:00:18</p> <p>24 me an actual, you know, handwritten pages with his 11:00:23</p> <p>25 notes, yes. 11:00:28</p>	<p style="text-align: right;">61</p> <p>1 about how you were performing in your position during 11:01:45</p> <p>2 those meetings? 11:01:49</p> <p>3 A. "Never" is a rather definitive word, but I 11:01:50</p> <p>4 would say hardly ever. I don't recall more than a 11:01:56</p> <p>5 couple, but, again, that wasn't the nature of those 11:02:06</p> <p>6 meetings. 11:02:10</p> <p>7 Q. Let me -- let me refer you to Exhibit 4, 11:02:14</p> <p>8 which is an Excel spreadsheet that contains the 11:02:18</p> <p>9 substance of texts that were produced by you in this 11:02:22</p> <p>10 litigation. 11:02:25</p> <p>11 (Exhibit 4 previously marked 11:02:26</p> <p>12 for identification and referenced 11:02:27</p> <p>13 herein: Spreadsheet pages 1-10 11:02:27</p> <p>14 containing substance of texts) 11:02:36</p> <p>15 Q. Do you have Exhibit 4 in front of you? 11:02:36</p> <p>16 A. Okay. 11:02:36</p> <p>17 Q. And you report that Larry went off on you 11:02:40</p> <p>18 that morning. 11:02:43</p> <p>19 A. The Exhibit 4 you have is text messages -- 11:02:46</p> <p>20 Q. Right. 11:02:47</p> <p>21 A. -- correct? 11:02:47</p> <p>22 Q. Yes, it is. If you look at December 3rd, 11:02:51</p> <p>23 2013, that's the one I'm referencing. 11:02:56</p> <p>24 MR. LEE: So we need to go to that page, I 11:02:58</p> <p>25 guess. 11:02:58</p>

Baker, Earl Donald

August 14, 2020

17 (Pages 62 to 65)

62	64
<p>1 MS. BERTRAM: It's on the -- it's on the 11:02:58</p> <p>2 first page. 11:02:59</p> <p>3 Q. Do you have that in front of you,</p> <p>4 Mr. Baker?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. 11:03:11</p> <p>7 <b>A. The first page goes from March to October.</b> 11:03:11</p> <p>8 Q. Right. If you look at the last entry, it's 11:03:14</p> <p>9 October 3rd, 2013, right? 11:03:16</p> <p>10 <b>A. Yes.</b> 11:03:18</p> <p>11 MR. LEE: Hold on. Hold on. Are we 11:03:30</p> <p>12 looking at the same one right now? 11:03:31</p> <p>13 MS. BERTRAM: This should be 4-A is the one 11:03:33</p> <p>14 I'm referencing. 11:03:36</p> <p>15 MR. LEE: I have two 4s. That's the -- I 11:03:37</p> <p>16 have a thick one and a thin one. 11:03:39</p> <p>17 MS. BERTRAM: The one I'm relying on, the 11:03:50</p> <p>18 date, the first date is March 12th, 2013. 11:03:50</p> <p>19 MR. LEE: Right, 12:55. 11:03:53</p> <p>20 MS. BERTRAM: Yes. 11:03:56</p> <p>21 MR. LEE: Okay. That's the thin one. 11:03:56</p> <p>22 There's another one called -- let's just make sure of 11:03:57</p> <p>23 it, because there's another one entitled Exhibit 4. 11:03:58</p> <p>24 MS. BERTRAM: Exhibits 4-A and 4-B. 11:04:03</p> <p>25 MR. LEE: Okay. So which one is this, the 11:04:05</p>	<p>1 sent and received by your devices? 11:05:24</p> <p>2 <b>A. When you say "your devices," you mean me 11:05:30</b></p> <p>3 personally? 11:05:34</p> <p>4 Q. They reflect text messages that were sent 11:05:35</p> <p>5 and received by the devices of Ms. Baker and you, 11:05:38</p> <p>6 correct? 11:05:41</p> <p>7 <b>A. Yes.</b> 11:05:42</p> <p>8 Q. Let's look at Exhibit 4-A. The last entry 11:05:43</p> <p>9 on page 1 you report that "Larry went off on me this 11:05:51</p> <p>10 morning. I did nothing. I told him the drill machine 11:05:54</p> <p>11 is still down. He said when will it be fixed. I said 11:05:58</p> <p>12 I don't know." 11:06:01</p> <p>13 Does this reflect communications that you had 11:06:06</p> <p>14 with Mr. Baker during one of these weekly one-on-one 11:06:07</p> <p>15 meetings? 11:06:10</p> <p>16 <b>A. Yes.</b> 11:06:11</p> <p>17 Q. Okay. And when you say, "I did nothing," 11:06:11</p> <p>18 was that -- were you reporting what Larry had said to 11:06:18</p> <p>19 you, that you had done nothing? 11:06:21</p> <p>20 <b>A. I can't remember my state of mind at that 11:06:22</b></p> <p>21 time, but I can say whether I said I did nothing in 11:06:25</p> <p>22 response or that I had done nothing wrong, both would 11:06:31</p> <p>23 be true, but I can't tell which I meant at that time. 11:06:38</p> <p>24 Q. And during these one-on-one meetings he 11:06:42</p> <p>25 would raise concerns about things that had or had not 11:06:44</p>
63	65
<p>1 thin one? Is that A or B? 11:04:10</p> <p>2 MS. BERTRAM: The thin one is A. 11:04:12</p> <p>3 MR. LEE: Okay. Got it. 11:04:14</p> <p>4 Q. Let me just back up a little bit, 11:04:23</p> <p>5 Mr. Baker. Did you have an opportunity to review 11:04:26</p> <p>6 Exhibit 4-A prior to your deposition? 11:04:29</p> <p>7 <b>A. Yes.</b> 11:04:33</p> <p>8 Q. And did you have an opportunity to review 11:04:34</p> <p>9 Exhibit 4-B as well? 11:04:36</p> <p>10 <b>A. Mine are not marked A and B.</b> 11:04:39</p> <p>11 Q. Exhibit 4-B is a set of text messages that 11:04:43</p> <p>12 we sent to you two weeks ago, and we had asked 11:04:47</p> <p>13 Ms. Baker about them during her deposition. She said 11:04:53</p> <p>14 that you had taken them in to work with you to look 11:04:55</p> <p>15 them over. And then I thought you had them in front 11:04:58</p> <p>16 of you when we started -- tried to start your 11:05:00</p> <p>17 deposition two weeks ago. Do you know what I'm 11:05:02</p> <p>18 talking about? 11:05:04</p> <p>19 <b>A. Yes.</b> 11:05:04</p> <p>20 Q. Okay. Do you have that with you right now? 11:05:05</p> <p>21 <b>A. No, I don't.</b> 11:05:08</p> <p>22 Q. Okay. Let's just focus on Exhibit 4-A and 11:05:10</p> <p>23 I'll get 4-B over to you. 11:05:14</p> <p>24 And you said you had a chance to look over 11:05:18</p> <p>25 Exhibit 4-A. Does it reflect text messages that were 11:05:20</p>	<p>1 been done; is that right? 11:06:47</p> <p>2 <b>A. Like I said, there weren't -- that could 11:06:50</b></p> <p>3 happen. In this case that is not the case. This is 11:06:58</p> <p>4 nothing that I have control over, whether a machine is 11:07:01</p> <p>5 broken down, but yet Larry would have a fit over the 11:07:05</p> <p>6 fact that something wasn't being done. But if a 11:07:11</p> <p>7 machine is broken down, all I can do is tell the 11:07:16</p> <p>8 maintenance supervisor, Mr. Duffy, that that needs 11:07:23</p> <p>9 repaired, and he puts it on his list of priorities. 11:07:25</p> <p>10 Well, Larry going off on me over someone else 11:07:28</p> <p>11 not doing their job isn't something that I would 11:07:34</p> <p>12 consider where he is telling me I haven't done my job 11:07:36</p> <p>13 properly. That's where someone else hasn't done 11:07:40</p> <p>14 something to his satisfaction and he's not happy, but 11:07:44</p> <p>15 that in no way reflects anything I did. 11:07:47</p> <p>16 Q. Now let's look at -- there's a binder of 11:08:02</p> <p>17 materials that includes your -- portions of your 11:08:02</p> <p>18 document productions, and they're labeled Plaintiffs' 11:08:04</p> <p>19 Exhibits, and I want you to turn to Exhibit 66. 11:08:07</p> <p>20 <b>A. Okay. We have five different ones here.</b></p> <p>21 <b>Let me find out which ones -- okay. Plaintiffs'</b></p> <p>22 <b>Exhibits, I got it.</b></p> <p>23 Q. I'm sorry. I referred you to the wrong</p> <p>24 one. There should be one more. There's a single</p> <p>25 binder that says "Production Documents."</p>

Baker, Earl Donald

August 14, 2020

18 (Pages 66 to 69)

66	68
<p>1 <b>A. Yes.</b></p> <p>2 Q. And if you go to the first tab -- in the</p> <p>3 lower right-hand corner, Exhibit 66.</p> <p>4 <b>A. I think you have it incorrect again. The</b> 11:08:49</p> <p>5 <b>production documents don't have any tabs with numbers.</b> 11:08:50</p> <p>6 <b>It only has tabs with TELG Production and 07219</b> 11:08:53</p> <p>7 <b>production. But the one saying Production Documents</b> 11:09:01</p> <p>8 <b>has no tab 66.</b> 11:09:05</p> <p>9 Q. Right. I'm asking you to turn to the 11:09:09</p> <p>10 number 66. That's on the bottom right-hand corner of 11:09:11</p> <p>11 the document. They're in Bates-stamped number order. 11:09:14</p> <p>12 MR. LEE: Is this something that we have, 11:09:21</p> <p>13 Jill and I have? 11:09:23</p> <p>14 MS. BERTRAM: Yes. It should be in the 11:09:24</p> <p>15 link, and it's probably called "052715 TELG 11:09:26</p> <p>16 Production." 11:09:35</p> <p>17 MR. LEE: Okay. Hold on. Jill is looking 11:09:35</p> <p>18 for it now. 11:09:37</p> <p>19 MS. BERTRAM: Okay.</p> <p>20 MR. LEE: Is this in the last email, 11:10:01</p> <p>21 Connie? 11:10:04</p> <p>22 MS. BERTRAM: It should be --</p> <p>23 MR. LEE: We've got multiple emails from 11:10:05</p> <p>24 Missy. 11:10:07</p> <p>25 MS. BERTRAM: They all should go into the 11:10:08</p>	<p>1 not matter to me depending on what it is, if Earl can 11:12:49</p> <p>2 see it and we know what it is. 11:12:54</p> <p>3 MS. BERTRAM: These are production 11:12:59</p> <p>4 documents from Mr. Baker's production to OSHA on May 11:13:00</p> <p>5 27th, 2015. 11:13:03</p> <p>6 MR. LEE: Jill, did you download everything 11:13:24</p> <p>7 that Missy sent you? Okay. 11:13:25</p> <p>8 Earl, are you able to identify what Connie is 11:13:34</p> <p>9 referring to? 11:13:36</p> <p>10 THE WITNESS: Yeah. It's Larry's 11:13:37</p> <p>11 handwritten notes taken in those weekly meetings. 11:13:40</p> <p>12 MS. BERTRAM: Are you comfortable with me 11:13:48</p> <p>13 proceeding while you continue to look, John? 11:13:50</p> <p>14 MR. LEE: Hold on. We don't have any 11:13:54</p> <p>15 handwritten notes. 11:13:57</p> <p>16 MS. BERTRAM: You do. It's within the PDF. 11:14:00</p> <p>17 The PDF is a single compilation of the production 11:14:03</p> <p>18 documents ordered in Bates-stamp number. 11:14:06</p> <p>19 MR. LEE: Are you going to have like a 11:14:38</p> <p>20 series of questions on this notes list? Because if 11:14:40</p> <p>21 there is, I would just like to take a little break and 11:14:42</p> <p>22 get these notes. 11:14:45</p> <p>23 MS. BERTRAM: Let's go ahead and do that. 11:14:46</p> <p>24 MR. LEE: Maybe have Missy talk to Jill. 11:14:50</p> <p>25 MS. BERTRAM: What number should she call 11:14:54</p>
67	69
<p>1 same link. 11:10:10</p> <p>2 MR. LEE: Okay. Hold on. 11:10:11</p> <p>3 MS. BERTRAM: John, did you find them? 11:10:48</p> <p>4 MR. LEE: No, we can't -- is it an exhibit 11:10:50</p> <p>5 number? If there's an exhibit number, we can find it, 11:10:58</p> <p>6 I think. 11:11:00</p> <p>7 MS. BERTRAM: There's no exhibit number for 11:11:01</p> <p>8 it. The tab should say TELG Production, and it's one 11:11:03</p> <p>9 PDF and they're in Bates-stamp order. So you scroll 11:11:07</p> <p>10 through it looking on the right-hand side and you'll 11:11:11</p> <p>11 run into Baker 66. 11:11:13</p> <p>12 MR. LEE: We don't see it. Can you just 11:11:24</p> <p>13 have Missy resend it, just that one? Because we can't 11:11:28</p> <p>14 find the TELG. It's certainly not organized that way 11:11:32</p> <p>15 or identified that way. 11:11:36</p> <p>16 MS. BERTRAM: She said that Jill downloaded 11:11:43</p> <p>17 it. I don't -- I don't want to make Jill download it 11:11:48</p> <p>18 a second time. 11:11:52</p> <p>19 MR. LEE: We may have downloaded it. We're 11:11:54</p> <p>20 just having trouble identifying it. 11:11:55</p> <p>21 MS. BERTRAM: Right. Right. We're asking 11:12:30</p> <p>22 what the name of the PDF is.</p> <p>23 John, do you see that? It should say 052715. 11:12:32</p> <p>24 MR. LEE: 052715, Jill. 11:12:46</p> <p>25 Can you tell me what it is? That way, it may 11:12:46</p>	<p>1 her on? 11:14:57</p> <p>2 MR. LEE: 312-241-1420, and have Missy 11:14:57</p> <p>3 describe how Jill can find this, these notes. 11:15:02</p> <p>4 MS. BERTRAM: Right. Because I'm going to 11:15:06</p> <p>5 have a lot of questions about the materials, the 11:15:07</p> <p>6 production materials, so you definitely want to have 11:15:09</p> <p>7 it in front of you. So let's go on a little break 11:15:13</p> <p>8 right now. 11:15:19</p> <p>9 MR. LEE: Okay. 11:15:20</p> <p>10 VIDEO SPECIALIST: The time is 11:15 a.m., 11:15:20</p> <p>11 and we're off the record. 11:15:22</p> <p>12 (Proceedings recessed) 11:15:23</p> <p>13 VIDEO SPECIALIST: The time is 11:25, and 11:25:11</p> <p>14 we're back on the record. 11:25:18</p> <p>15 BY MS. BERTRAM: 11:25:19</p> <p>16 Q. Mr. Baker, I'd like you to look at the 11:25:19</p> <p>17 production documents Bates-stamped Baker 66 and Baker 11:25:22</p> <p>18 67. And you said these are handwritten notes of 11:25:26</p> <p>19 Mr. Flatley, right? 11:25:36</p> <p>20 <b>A. Yes.</b> 11:25:37</p> <p>21 Q. And the first page, which is Baker 66, 11:25:37</p> <p>22 those are dated May 20th, 2013, right? 11:25:40</p> <p>23 <b>A. Yes.</b> 11:25:43</p> <p>24 Q. And you had been with the company less than 11:25:45</p> <p>25 two months at that point. 11:25:47</p>

Baker, Earl Donald

August 14, 2020

19 (Pages 70 to 73)

70	72
<p>1 <b>A. That's correct.</b> 11:25:49</p> <p>2 Q. Would Mr. Wnuk have been in this meeting 11:25:50</p> <p>3 with you? 11:25:55</p> <p>4 <b>A. Yes.</b> 11:25:56</p> <p>5 Q. Okay. And this was one of your weekly 11:25:56</p> <p>6 meetings; is that right? 11:25:59</p> <p>7 <b>A. That's correct.</b> 11:26:03</p> <p>8 Q. Okay. And in the notes it talks about some 11:26:03</p> <p>9 projects that the department needed to undertake, 11:26:10</p> <p>10 correct? 11:26:12</p> <p>11 <b>A. Yes. We -- basically, we discussed what 11:26:13</b></p> <p>12 <b>things we were currently working on, and then Larry 11:26:20</b></p> <p>13 <b>would note those and then put just action points. At 11:26:23</b></p> <p>14 <b>times he would interject something that needed to be 11:26:31</b></p> <p>15 <b>done in order to attain that, that goal, but this was 11:26:37</b></p> <p>16 <b>mainly asking us what we're working on and giving him 11:26:43</b></p> <p>17 <b>action points to check up to make sure we were 11:26:50</b></p> <p>18 <b>progressing on those issues.</b> 11:26:53</p> <p>19 Q. And there's some handwriting at the bottom 11:26:55</p> <p>20 of that page. Is that your handwriting? 11:26:59</p> <p>21 <b>A. Yes.</b> 11:27:02</p> <p>22 Q. Okay. And it says "back." Do you know 11:27:05</p> <p>23 whether Baker 68 or 69 are what you wrote on the back 11:27:11</p> <p>24 of that page? 11:27:14</p> <p>25 <b>A. I don't believe 68 goes with that note.</b> 11:27:32</p>	<p>1 <b>A. It appears to be.</b> 11:29:05</p> <p>2 Q. Okay. 11:29:07</p> <p>3 MR. LEE: Just for the -- objection to 11:29:10</p> <p>4 the -- objection to the form of the question in that I 11:29:12</p> <p>5 do see -- I also see May 20 and I can't tell. I see 11:29:14</p> <p>6 two dates there on Baker 67. 11:29:20</p> <p>7 MS. BERTRAM: Right. What Mr. Baker said 11:29:23</p> <p>8 is that at times he would take his old notes, annotate 11:29:24</p> <p>9 them, and then put the new date on it. 11:29:28</p> <p>10 MR. LEE: Okay. 11:29:30</p> <p>11 Q. Just for clarity, Mr. Baker, the additional 11:29:33</p> <p>12 notes on the side in the marginalia, those are the 11:29:36</p> <p>13 ones from June 3rd, 2013, right? 11:29:40</p> <p>14 <b>A. Generally speaking, but they are also to 11:29:43</b></p> <p>15 <b>the top left of the original note where it says, need 11:29:49</b></p> <p>16 <b>something to be done, determination of how much 11:29:57</b></p> <p>17 <b>training left, that would have probably been an 11:29:59</b></p> <p>18 <b>additional note from the 3rd, but, you know, it's -- 11:30:03</b></p> <p>19 <b>it's really hard to tell with him, but I believe that 11:30:10</b></p> <p>20 <b>was an added note, that the original note ended with 11:30:13</b></p> <p>21 <b>Pioneer's inventory, and then he added the note to the 11:30:16</b></p> <p>22 <b>right of that.</b> 11:30:22</p> <p>23 Q. And let's turn to Baker 68. 11:30:24</p> <p>24 <b>A. Okay.</b> 11:30:28</p> <p>25 Q. And those are your handwritten notes, 11:30:29</p>
71	73
<p>1 Q. What about 69? 11:27:36</p> <p>2 <b>A. No, that would be Larry's handwriting 11:27:41</b></p> <p>3 <b>again. And so when I wrote "back," that meant my note 11:27:46</b></p> <p>4 <b>was not complete, but that that note would then be 11:27:51</b></p> <p>5 <b>completed on the back of that sheet.</b> 11:27:55</p> <p>6 Q. Okay. 11:27:59</p> <p>7 <b>A. So and -- go ahead.</b> 11:27:59</p> <p>8 Q. And so the fact that -- 11:28:06</p> <p>9 MR. LEE: Sorry. Did you answer whether 69 11:28:09</p> <p>10 goes with 66 or not? 11:28:12</p> <p>11 THE WITNESS: It does not. 11:28:16</p> <p>12 MR. LEE: Okay. 11:28:17</p> <p>13 Q. So did Mr. Flatley hand you the notes from 11:28:18</p> <p>14 the May 20, 2013 meeting during the meeting? 11:28:23</p> <p>15 <b>A. At times he would, but I couldn't recall 11:28:28</b></p> <p>16 <b>seven years ago.</b> 11:28:31</p> <p>17 Q. Right. But you made notes at the bottom at 11:28:32</p> <p>18 least, right? 11:28:37</p> <p>19 <b>A. Yes. So in this case I would say he 11:28:37</b></p> <p>20 <b>probably did, but I can't recall.</b> 11:28:41</p> <p>21 Q. Let's go to page 67 on the next page, and 11:28:44</p> <p>22 those are additional notes from June 3rd, 2013. 11:28:49</p> <p>23 <b>A. Yes.</b> 11:28:55</p> <p>24 Q. And those are all in Mr. Flatley's 11:28:56</p> <p>25 handwriting, correct? 11:29:01</p>	<p>1 right? 11:30:31</p> <p>2 <b>A. Yes, appears to be.</b> 11:30:32</p> <p>3 Q. Do you know when you made those? 11:30:34</p> <p>4 <b>A. No.</b> 11:30:35</p> <p>5 Q. Let's look at Baker 69. Those are your 11:30:37</p> <p>6 notes as well, right? 11:30:42</p> <p>7 <b>A. Yes.</b> 11:30:44</p> <p>8 Q. And do you know when you made those notes? 11:30:44</p> <p>9 <b>A. I don't know the exact date, but this would 11:30:51</b></p> <p>10 <b>have been a later time. If you look at the second, 11:30:53</b></p> <p>11 <b>right down towards the bottom where it says staff 11:31:00</b></p> <p>12 <b>meeting 12 -- I don't know if it says 12-12-14 -- that 11:31:03</b></p> <p>13 <b>would indicate that it was probably something around 11:31:13</b></p> <p>14 <b>December.</b> 11:31:18</p> <p>15 Q. So there's a reference here to Ed Suraci. 11:31:18</p> <p>16 Had Mr. Flatley suggested that you take training from 11:31:24</p> <p>17 him? 11:31:29</p> <p>18 <b>A. No.</b> 11:31:31</p> <p>19 Q. Pardon me? 11:31:33</p> <p>20 <b>A. No.</b> 11:31:34</p> <p>21 Q. Do you know why you made a reference to 11:31:36</p> <p>22 Mr. Suraci in your notes? 11:31:38</p> <p>23 <b>A. If I did at that time, I had never met him, 11:31:42</b></p> <p>24 <b>and, to my recollection, in February I had never heard 11:31:45</b></p> <p>25 <b>his name. This note, which we can't tell for sure 11:31:49</b></p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

20 (Pages 74 to 77)

74	76
<p>1 when this note was made, but if it was made in 11:31:54</p> <p>2 January, I didn't take note of it. But Ed had the -- 11:32:01</p> <p>3 his main job, aside from mediating what was going on 11:32:08</p> <p>4 in February, was to train -- to train supervisors or 11:32:12</p> <p>5 lead men. 11:32:21</p> <p>6 So if he's talking about training, it's not 11:32:24</p> <p>7 training of me as much as trying to find a replacement 11:32:26</p> <p>8 for Dan Durrand, who was the CNC, and Pavel Tarrawonga 11:32:32</p> <p>9 was raised as the next possible replacement, and 11:32:42</p> <p>10 Flatley disagreed with him. So it has to do with Ed 11:32:47</p> <p>11 Suraci did do one-on-one training with Pavel 11:32:55</p> <p>12 Tarrawonga. 11:32:59</p> <p>13 Q. So above the reference to December, and I 11:33:00</p> <p>14 think it's 19-2014, there's a line and above it, it 11:33:03</p> <p>15 says, "Baldor on back order," B-A-L-D-O-R. What's 11:33:08</p> <p>16 Baldor? 11:33:14</p> <p>17 A. Which -- which -- 11:33:15</p> <p>18 Q. It's right above the date that you 11:33:16</p> <p>19 referenced earlier above "Staff Meeting." 11:33:18</p> <p>20 A. Okay. Baldor is usually an electrical 11:33:20</p> <p>21 motor. They're a manufacturer. So I don't know that 11:33:31</p> <p>22 specific note. But if it says, "Baldor on back 11:33:36</p> <p>23 order," that's probably referencing a machine that was 11:33:39</p> <p>24 broken and the part had been ordered, but it was on 11:33:42</p> <p>25 back order, so we were probably just discussing how 11:33:48</p>	<p>1 MS. BERTRAM: I guess we'll get the 11:36:34</p> <p>2 question and the answer back. We were talking about 11:36:34</p> <p>3 ISO audits. (The record was read by the reporter.) 11:36:35</p> <p>4 MR. LEE: Okay. I got the question. 11:36:35</p> <p>5 A. So what I was saying -- 11:36:35</p> <p>6 MR. LEE: Objection to the form for the 11:36:38</p> <p>7 record. Objection to the form of the question, but 11:36:39</p> <p>8 please go ahead and answer it, if you can. 11:36:43</p> <p>9 A. Okay. What I'm saying there, in my 11:36:45</p> <p>10 estimation, is that because -- because ISO requires 11:36:51</p> <p>11 certain safety documents to be kept like what's on the 11:36:55</p> <p>12 pitch board in some cases forever so that there's an 11:36:59</p> <p>13 audit trail that, if someone were to be hurt down the 11:37:03</p> <p>14 road, that they can come back and see that all the ISO 11:37:08</p> <p>15 regulations were followed and that the audits were 11:37:11</p> <p>16 done. 11:37:12</p> <p>17 So that's my notation that ISO is going to look 11:37:17</p> <p>18 at this so I'm going to keep that. So I maintain 11:37:21</p> <p>19 those records. That's why some of the stuff was in 11:37:24</p> <p>20 that credenza, that we were required by ISO to keep 11:37:31</p> <p>21 certain documents forever. So that's my impression of 11:37:38</p> <p>22 what that is. 11:37:39</p> <p>23 But the next thing where it says "audit" does 11:37:42</p> <p>24 not apply to the ISO. I think that that audit is -- 11:37:42</p>
75	77
<p>1 soon the machine might be repaired and brought it back 11:33:53</p> <p>2 up online. 11:33:57</p> <p>3 Q. And then under the reference to staff 11:33:59</p> <p>4 meeting it says, "ISO," I-S-O, and then on the next 11:34:01</p> <p>5 line it says, "audit." Do you know what that's 11:34:07</p> <p>6 referring to? 11:34:09</p> <p>7 A. I do not see ISO anywhere. Oh, okay. 11:34:10</p> <p>8 Q. It's about four lines underneath it. 11:34:22</p> <p>9 A. So I don't know for sure. We're trying to 11:34:35</p> <p>10 do a forensic examination of handwritten notes of 11:34:41</p> <p>11 incomplete thoughts from seven years ago. 11:34:45</p> <p>12 So it's my general impression, but I can't tell 11:34:48</p> <p>13 you for certainty what it was, but ISO audits, 11:34:51</p> <p>14 International Standards, there are certain documents 11:34:58</p> <p>15 like what would be on the pitch board that are 11:35:00</p> <p>16 maintained forever, and so -- 11:35:04</p> <p>17 Q. Hold on one second. Hold on one second. I 11:35:08</p> <p>18 have to turn that phone off. 11:35:25</p> <p>19 MR. LEE: When we get back, Ms. Court 11:35:27</p> <p>20 Reporter, if you could just read the last question? I 11:35:30</p> <p>21 just want to make sure that we're talking about the 11:35:32</p> <p>22 same thing here.</p> <p>23 MS. BERTRAM: I was going to get rid of</p> <p>24 that phone call.</p> <p>25 (Discussion regarding telephone not reported.)</p>	<p>1 pertains to something to do with Jurga. So it wasn't 11:37:48</p> <p>2 ISO audit. ISO is said on the line above, but audit 11:37:56</p> <p>3 has something to do with Jurga, that Jurga was to 11:38:00</p> <p>4 audit something. 11:38:02</p> <p>5 Q. Is it your understanding that Mr. Flatley 11:38:07</p> <p>6 met with the other three cell coordinators for weekly 11:38:09</p> <p>7 meetings? 11:38:16</p> <p>8 A. Yes. 11:38:16</p> <p>9 Q. And did you attend those meetings as well? 11:38:17</p> <p>10 A. No. 11:38:19</p> <p>11 Q. Now you received several performance 11:38:26</p> <p>12 evaluations from Smith &amp; Wesson, right? 11:38:28</p> <p>13 A. Yes. 11:38:30</p> <p>14 Q. If you can go to Exhibit 5, that's the 11:38:31</p> <p>15 performance evaluation that you received in June of 11:38:37</p> <p>16 2013, right? 11:38:39</p> <p>17 A. Exhibit 5, is that going back to the 11:38:41</p> <p>18 other -- 11:38:46</p> <p>19 Q. Yes. 11:38:46</p> <p>20 A. Okay. All right. I got it. 11:38:47</p> <p>21 Q. And is Exhibit 5 at least a portion of the 11:38:52</p> <p>22 evaluation that you received in June of 2013? 11:38:57</p> <p>23 A. Yes. 11:39:00</p> <p>24 (Exhibit 5 previously marked 11:39:03</p> <p>25 for identification and referenced</p>

Baker, Earl Donald

August 14, 2020

21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1           <b>herein: Performance evaluation of</b></p> <p>2           <b>June of 2013)</b> <span style="float: right;">11:39:03</span></p> <p>3           Q. And if you look at that same set of <span style="float: right;">11:39:03</span></p> <p>4           production documents at 490, are those the SMART goals <span style="float: right;">11:39:06</span></p> <p>5           that were provided to you in connection with this <span style="float: right;">11:39:16</span></p> <p>6           evaluation? <span style="float: right;">11:39:18</span></p> <p>7           <b>A. Right now I do not -- so there are just the</b> <span style="float: right;">11:39:19</span></p> <p>8           <b>two front pages. I don't have the SMART goals under</b> <span style="float: right;">11:39:24</span></p> <p>9           <b>4.</b> <span style="float: right;">11:39:31</span></p> <p>10          Q. Right. To go to the SMART goals, you need <span style="float: right;">11:39:31</span></p> <p>11          to go to page 490. Did you locate that page? <span style="float: right;">11:39:33</span></p> <p>12          <b>A. I'm looking.</b> <span style="float: right;">11:40:05</span></p> <p>13          MR. LEE: Is this the document that begins <span style="float: right;">11:40:07</span></p> <p>14          with Baker 148, Connie? <span style="float: right;">11:40:09</span></p> <p>15          MS. BERTRAM: Let me check. It begins -- <span style="float: right;">11:40:14</span></p> <p>16          the first one I have is 37. <span style="float: right;">11:40:19</span></p> <p>17          MR. LEE: Yeah, okay, got it. <span style="float: right;">11:40:29</span></p> <p>18          Q. Mr. Baker, did you find the page 490? <span style="float: right;">11:40:32</span></p> <p>19          <b>A. Yes.</b> <span style="float: right;">11:40:35</span></p> <p>20          Q. Okay. Go first to 493, which is just a <span style="float: right;">11:40:35</span></p> <p>21          couple pages after it. Is that the third page of the <span style="float: right;">11:40:39</span></p> <p>22          evaluation that you received in June of 2013? <span style="float: right;">11:40:43</span></p> <p>23          <b>A. I believe so.</b> <span style="float: right;">11:40:47</span></p> <p>24          Q. And the handwriting that's on that page is <span style="float: right;">11:40:48</span></p> <p>25          Mr. Flatley's, right? <span style="float: right;">11:40:53</span></p>	<p style="text-align: right;">80</p> <p>1           quality initiative with the team leads," right? <span style="float: right;">11:42:31</span></p> <p>2           <b>A. I can make out certain words, but, again,</b> <span style="float: right;">11:42:35</span></p> <p>3           <b>it's such a poor quality that the typed portion, some</b> <span style="float: right;">11:42:40</span></p> <p>4           <b>of the words are illegible.</b> <span style="float: right;">11:42:45</span></p> <p>5           Q. Right. I'm referring you to the <span style="float: right;">11:42:48</span></p> <p>6           handwriting that's below the typed portion. <span style="float: right;">11:42:50</span></p> <p>7           <b>A. Okay.</b> <span style="float: right;">11:42:52</span></p> <p>8           Q. It says, "develop a quality initiative with <span style="float: right;">11:42:52</span></p> <p>9           the team leads," right? <span style="float: right;">11:42:55</span></p> <p>10          <b>A. Yes.</b> <span style="float: right;">11:42:56</span></p> <p>11          Q. And this is a portion of the review that <span style="float: right;">11:42:56</span></p> <p>12          you received in June of 2013, right? <span style="float: right;">11:43:01</span></p> <p>13          <b>A. Yes.</b> <span style="float: right;">11:43:03</span></p> <p>14          Q. And they provided a copy of this evaluation <span style="float: right;">11:43:04</span></p> <p>15          to you, correct? <span style="float: right;">11:43:08</span></p> <p>16          <b>A. That's correct.</b> <span style="float: right;">11:43:09</span></p> <p>17          Q. Okay. And if you go back to page 490 to <span style="float: right;">11:43:10</span></p> <p>18          492, those are SMART objectives that were given to <span style="float: right;">11:43:19</span></p> <p>19          you, correct? <span style="float: right;">11:43:22</span></p> <p>20          <b>A. Yes.</b> <span style="float: right;">11:43:22</span></p> <p>21          Q. And you received a copy of these? <span style="float: right;">11:43:22</span></p> <p>22          <b>A. Yes.</b> <span style="float: right;">11:43:24</span></p> <p>23          Q. And was it your understanding that you were <span style="float: right;">11:43:25</span></p> <p>24          expected to meet these SMART objectives? <span style="float: right;">11:43:35</span></p> <p>25          <b>A. Yes. They are objectives. They are not --</b> <span style="float: right;">11:43:40</span></p>
<p style="text-align: right;">79</p> <p>1           <b>A. Yes.</b> <span style="float: right;">11:40:54</span></p> <p>2           Q. And it's signed by Mr. Flatley and <span style="float: right;">11:40:54</span></p> <p>3           Mr. Fontaine; is that right? <span style="float: right;">11:40:58</span></p> <p>4           <b>A. Yes.</b> <span style="float: right;">11:40:58</span></p> <p>5           Q. It's also signed by you on July 8th of <span style="float: right;">11:40:58</span></p> <p>6           2013, correct? <span style="float: right;">11:41:03</span></p> <p>7           <b>A. Correct.</b> <span style="float: right;">11:41:04</span></p> <p>8           Q. And in terms of the development needs, <span style="float: right;">11:41:05</span></p> <p>9           there are certain action items that are identified in <span style="float: right;">11:41:11</span></p> <p>10          type -- in typewriting, right? <span style="float: right;">11:41:15</span></p> <p>11          <b>A. No.</b> <span style="float: right;">11:41:19</span></p> <p>12          Q. At the top of page 493. <span style="float: right;">11:41:23</span></p> <p>13          <b>A. The next part of the form, that's not</b> <span style="float: right;">11:41:30</span></p> <p>14          <b>typed.</b> <span style="float: right;">11:41:33</span></p> <p>15          Q. It says, "Earl should attend Armorer School <span style="float: right;">11:41:33</span></p> <p>16          and a problem-solving seminar." <span style="float: right;">11:41:37</span></p> <p>17          <b>A. On which page?</b> <span style="float: right;">11:41:40</span></p> <p>18          Q. 493. <span style="float: right;">11:41:41</span></p> <p>19          <b>A. I will mention that this is probably the</b> <span style="float: right;">11:42:01</span></p> <p>20          <b>worst copy of anything. In Business Objectives,</b> <span style="float: right;">11:42:04</span></p> <p>21          <b>certain lines are totally illegible.</b> <span style="float: right;">11:42:13</span></p> <p>22          Q. Right. I'm referring to page 493, which <span style="float: right;">11:42:19</span></p> <p>23          starts "Individual Development Plan," right? <span style="float: right;">11:42:22</span></p> <p>24          <b>A. Yes.</b> <span style="float: right;">11:42:26</span></p> <p>25          Q. And it says, in handwriting, "develop a <span style="float: right;">11:42:27</span></p>	<p style="text-align: right;">81</p> <p>1           <b>there are things that come up in the -- so, as part of</b> <span style="float: right;">11:43:49</span></p> <p>2           <b>management, you have clear objectives, this is what we</b> <span style="float: right;">11:43:55</span></p> <p>3           <b>like to attain. They aren't mandates and they</b> <span style="float: right;">11:43:58</span></p> <p>4           <b>aren't -- so I just want to clarify that these are the</b> <span style="float: right;">11:44:03</span></p> <p>5           <b>things that we would like to complete. So in that</b> <span style="float: right;">11:44:07</span></p> <p>6           <b>context, yes.</b> <span style="float: right;">11:44:12</span></p> <p>7           Q. And after your June 2013 review, you kept <span style="float: right;">11:44:14</span></p> <p>8           having weekly meetings with Mr. Flatley, correct? <span style="float: right;">11:44:18</span></p> <p>9           <b>A. That's correct.</b> <span style="float: right;">11:44:20</span></p> <p>10          Q. And let me refer you back to Exhibit 4 in <span style="float: right;">11:44:24</span></p> <p>11          the volume that you've been working with. <span style="float: right;">11:44:31</span></p> <p>12          MR. LEE: I'm sorry. Where are we now? <span style="float: right;">11:44:39</span></p> <p>13          Which one are we looking at? <span style="float: right;">11:44:41</span></p> <p>14          MS. BERTRAM: We are looking at Exhibit <span style="float: right;">11:44:43</span></p> <p>15          4-A. We're on page 2. <span style="float: right;">11:44:45</span></p> <p>16          <b>A. Page 4 are text messages again.</b> <span style="float: right;">11:44:52</span></p> <p>17          Q. Yes. Actually on page 1 of Exhibit 4-A. <span style="float: right;">11:44:55</span></p> <p>18          And during the course of the meetings at the <span style="float: right;">11:45:10</span></p> <p>19          pitch board and weekly meetings that you had with <span style="float: right;">11:45:14</span></p> <p>20          Mr. Flatley, Mr. Flatley provided you with input <span style="float: right;">11:45:17</span></p> <p>21          concerning your performance, correct? <span style="float: right;">11:45:21</span></p> <p>22          <b>A. State that again.</b> <span style="float: right;">11:45:25</span></p> <p>23          Q. After your evaluation in June of 2013, <span style="float: right;">11:45:26</span></p> <p>24          Mr. Flatley continued to provide performance feedback <span style="float: right;">11:45:34</span></p> <p>25          to you through the morning pitch board meetings, <span style="float: right;">11:45:37</span></p>



Baker, Earl Donald

August 14, 2020

22 (Pages 82 to 85)

82	84
<p>1 right? 11:45:41</p> <p>2 <b>A. Yes.</b> 11:45:42</p> <p>3 Q. And he also provided to you input 11:45:43</p> <p>4 concerning your performance and the department's 11:45:47</p> <p>5 performance through the weekly meetings with 11:45:52</p> <p>6 Mr. Flatley, right? 11:45:54</p> <p>7 <b>A. Yes. Well, that wasn't the intent of the</b> 11:45:54</p> <p>8 <b>meeting, but it was -- he might mention something</b> 11:45:57</p> <p>9 <b>during those meetings, yes.</b> 11:46:02</p> <p>10 Q. Let's go to page 315 in the production 11:46:04</p> <p>11 documents. 11:46:16</p> <p>12 <b>A. Bates number or page 315?</b> 11:46:23</p> <p>13 Q. At the bottom right-hand corner, Baker 315. 11:46:25</p> <p>14 <b>A. Oh, another manual.</b> 11:46:30</p> <p>15 Q. And that's in your handwriting, correct? 11:46:32</p> <p>16 Is that yes? 11:47:02</p> <p>17 <b>A. Yes.</b> 11:47:02</p> <p>18 Q. Okay. Great. And do you know when these 11:47:03</p> <p>19 notes were taken? 11:47:07</p> <p>20 <b>A. No, I don't.</b> 11:47:09</p> <p>21 Q. Do you know whether they were during a 11:47:11</p> <p>22 meeting with Mr. Flatley? 11:47:14</p> <p>23 <b>A. No, I don't.</b> 11:47:16</p> <p>24 Q. So let's go to the next page, which is page 11:47:18</p> <p>25 316. About an inch down on the page it says 9-23-13. 11:47:21</p>	<p>1 317. Do you know what -- those are your handwritten 11:48:46</p> <p>2 notes, correct? 11:48:51</p> <p>3 <b>A. On 317?</b> 11:48:54</p> <p>4 Q. Yes. 11:48:57</p> <p>5 <b>A. It looks like it, at least some of them,</b> 11:48:58</p> <p>6 <b>yes.</b> 11:49:02</p> <p>7 Q. And towards the bottom it says, "done 11:49:05</p> <p>8 training September 17th to 18th," and then "October 11:49:07</p> <p>9 8th." Do those notes suggest to you that they were 11:49:11</p> <p>10 made before September 17th of 2013? 11:49:14</p> <p>11 <b>A. Yes, I would say so.</b> 11:49:17</p> <p>12 Q. Okay. And there's a 1 and a 2. Are those 11:49:18</p> <p>13 in your handwriting? 11:49:23</p> <p>14 <b>A. It looks like it, yes.</b> 11:49:26</p> <p>15 Q. And it says, number 1, "August 1, quality 11:49:27</p> <p>16 initiative." Do you recall what that is referring to? 11:49:31</p> <p>17 <b>A. Yes. We, in the course of our meetings, we</b> 11:49:34</p> <p>18 <b>identified that we had quality problems within the</b> 11:49:39</p> <p>19 <b>department, that we had determined we only had the</b> 11:49:46</p> <p>20 <b>quality of 66 percent. So our quality initiatives, we</b> 11:49:49</p> <p>21 <b>implemented certain policies that the operators were</b> 11:49:58</p> <p>22 <b>to do and that we would monitor and track on our door.</b> 11:50:02</p> <p>23 <b>So we did get our quality up to 99 percent.</b> 11:50:09</p> <p>24 <b>And, again, it was just a note to probably was</b> 11:50:16</p> <p>25 <b>addressed someplace in that meeting, so it was a</b> 11:50:24</p>
83	85
<p>1 That was a meeting with Mr. Flatley, correct? 11:47:30</p> <p>2 <b>A. Yes.</b> 11:47:33</p> <p>3 Q. And was that a one-on-one meeting or was 11:47:35</p> <p>4 that a board meeting? 11:47:38</p> <p>5 <b>A. It's hard to say. Mike Catouli's name is</b> 11:47:40</p> <p>6 <b>on that meeting note. I don't know if he was at that</b> 11:47:46</p> <p>7 <b>meeting or not.</b> 11:47:49</p> <p>8 Q. And does this reflect your notes of that 11:47:54</p> <p>9 meeting whenever Mr. -- I can't remember how you 11:47:57</p> <p>10 pronounce his last name -- whether Mike was there or 11:48:01</p> <p>11 not? 11:48:04</p> <p>12 <b>A. Yeah, those are some notes I took.</b> 11:48:05</p> <p>13 Q. Okay. And then lower down on the page 11:48:07</p> <p>14 there's a light word, Larry, and then there's some -- 11:48:09</p> <p>15 a listing of items under it, "unfocused, not getting 11:48:14</p> <p>16 anything accomplished, losing credibility, throughout 11:48:17</p> <p>17 the shop, better pull it together, not data driven, 11:48:22</p> <p>18 not a team player." 11:48:26</p> <p>19 Those notes are comments that Mr. Flatley made 11:48:29</p> <p>20 to you? 11:48:31</p> <p>21 <b>A. That would be my impression, yes.</b> 11:48:33</p> <p>22 Q. Okay. And those were made to you on or 11:48:35</p> <p>23 after September 23rd of 2013? 11:48:39</p> <p>24 <b>A. I would say yes.</b> 11:48:42</p> <p>25 Q. Okay. Let's go to the next page, which is 11:48:43</p>	<p>1 <b>bullet point for me to just recall what had been</b> 11:50:28</p> <p>2 <b>mentioned in that meeting.</b> 11:50:30</p> <p>3 Q. This is a meeting with Mr. Flatley, right? 11:50:31</p> <p>4 <b>A. Yes. Well, I don't know that. It's</b> 11:50:34</p> <p>5 <b>impossible to tell from that note whether that was</b> 11:50:38</p> <p>6 <b>with Flatley or whether that's just -- it really</b> 11:50:40</p> <p>7 <b>doesn't say what that -- who was there.</b> 11:50:45</p> <p>8 Q. And then number 2, is it KiZAN? 11:50:48</p> <p>9 <b>A. Yes.</b> 11:50:52</p> <p>10 Q. Twice a month. Had Mr. Flatley by that 11:50:54</p> <p>11 point told you that you needed to do KiZANs twice a 11:50:58</p> <p>12 month? 11:51:01</p> <p>13 <b>A. At this point I don't know whether he</b> 11:51:04</p> <p>14 <b>mentioned it. He had mentioned it a couple of times</b> 11:51:06</p> <p>15 <b>throughout the thing, but this note is to -- is a</b> 11:51:09</p> <p>16 <b>note -- I take notes for my purposes, not for somebody</b> 11:51:18</p> <p>17 <b>else's, so it was to tell me to organize the KiZAN</b> 11:51:21</p> <p>18 <b>with Bob Francis.</b> 11:51:28</p> <p>19 Q. Okay. And let's go to the next page, which 11:51:30</p> <p>20 is page 318, and there's a note February 12th, 2014. 11:51:33</p> <p>21 Are those notes that you took? 11:51:38</p> <p>22 <b>A. Yes.</b> 11:51:40</p> <p>23 Q. And there's also a listing from February of 11:51:40</p> <p>24 17; is that right? 11:51:47</p> <p>25 <b>A. Yes.</b> 11:51:50</p>

Baker, Earl Donald

August 14, 2020

23 (Pages 86 to 89)

86	88
<p>1 Q. And do you know -- these are -- these are 11:51:51</p> <p>2 your notes, correct? 11:51:54</p> <p>3 <b>A. Yes.</b> 11:51:54</p> <p>4 Q. And do you know, on the 12th, when those 11:51:55</p> <p>5 were taken, for instance, whether they were taken 11:51:59</p> <p>6 during a meeting? 11:52:01</p> <p>7 <b>A. No.</b> 11:52:02</p> <p>8 Q. Do you know when the or in what context the 11:52:04</p> <p>9 February 17th notes were made? 11:52:08</p> <p>10 <b>A. No.</b> 11:52:10</p> <p>11 Q. So let's go to Exhibit 325. I'm sorry. 11:52:12</p> <p>12 Page 325. 11:52:17</p> <p>13 <b>A. Okay.</b> 11:52:18</p> <p>14 Q. Do you know what this document is? 11:52:19</p> <p>15 <b>A. Yes.</b> 11:52:21</p> <p>16 Q. What is it? 11:52:22</p> <p>17 <b>A. So as a part of our -- they would have</b> 11:52:24</p> <p>18 <b>fiscal-year goals, and we were supposed to turn in</b> 11:52:31</p> <p>19 <b>fiscal-year goals to Mr. Fontaine. And so these were</b> 11:52:34</p> <p>20 <b>initiatives that I felt like we needed to do both a</b> 11:52:45</p> <p>21 <b>short-range and long-range plan, as it were, for my</b> 11:52:52</p> <p>22 <b>department and where I wanted us to go.</b> 11:52:56</p> <p>23 Q. And when did you prepare this document? 11:52:59</p> <p>24 <b>A. I'm not able -- I'm not positive, but I do</b> 11:53:01</p> <p>25 <b>recall putting this document together and a copy was</b> 11:53:07</p>	<p>1 -- there's three items that are numbered in the middle 11:54:37</p> <p>2 of the page, right? 11:54:40</p> <p>3 <b>A. Okay.</b> 11:54:41</p> <p>4 Q. And number 1 is "vision for department"; 11:54:41</p> <p>5 number 2, "not on top of what's going on in the 11:54:45</p> <p>6 department," and it says "Larry," and then, quote, 11:54:48</p> <p>7 "communication within department not good, morale 11:54:54</p> <p>8 poor" ...[network interruption]... is this some input 11:54:58</p> <p>9 that Mr. Flatley had provided to you? 11:55:01</p> <p>10 <b>A. Those are statements that he had made at</b> 11:55:05</p> <p>11 <b>some point.</b> 11:55:10</p> <p>12 Q. When did he make those statements? 11:55:10</p> <p>13 <b>A. At some point. He was a -- he was a person</b> 11:55:13</p> <p>14 <b>that overstated things in order to make some kind of a</b> 11:55:19</p> <p>15 <b>point. When somebody says nothing has been</b> 11:55:24</p> <p>16 <b>accomplished since he got here, obviously that's a</b> 11:55:29</p> <p>17 <b>statement made not literal, because obviously you</b> 11:55:32</p> <p>18 <b>can't say nothing has taken place in a month, you</b> 11:55:40</p> <p>19 <b>know. We produce \$63 million a month was our sales at</b> 11:55:44</p> <p>20 <b>that point.</b> 11:55:49</p> <p>21 <b>So these -- Larry was given to making</b> 11:55:50</p> <p>22 <b>outrageous statements. These were copies of his</b> 11:55:55</p> <p>23 <b>statements that he had made at some point, whether on</b> 11:55:58</p> <p>24 <b>the floor or to me, whatever, and I was addressing</b> 11:56:01</p> <p>25 <b>them to make sure that I noted what he said. And</b> 11:56:06</p>
87	89
<p>1 sent on to Larry, but the primary source for this was 11:53:13</p> <p>2 Fontaine for his fiscal-year goals. 11:53:19</p> <p>3 Q. And so you provided it to Mr. Flatley and 11:53:22</p> <p>4 Mr. Fontaine; is that right? 11:53:25</p> <p>5 <b>A. Yes.</b> 11:53:26</p> <p>6 Q. And did you have a meeting with them about 11:53:26</p> <p>7 it? 11:53:29</p> <p>8 <b>A. Not in this particular context, no.</b> 11:53:30</p> <p>9 Q. Do you recall just generally what time it 11:53:33</p> <p>10 was, whether, for instance, it was after the February 11:53:37</p> <p>11 2014 review or before it? 11:53:39</p> <p>12 <b>A. No, I really can't say.</b> 11:53:42</p> <p>13 Q. And did anybody else work with you on the 11:53:44</p> <p>14 drafting of this document? 11:53:49</p> <p>15 <b>A. The team always had input on some of the</b> 11:53:52</p> <p>16 <b>things that we were doing, so while they were part of</b> 11:53:57</p> <p>17 <b>this, but no one sat with me and specifically</b> 11:54:02</p> <p>18 <b>formulated this that I know of.</b> 11:54:05</p> <p>19 Q. Let's go to the next page, which is 337. 11:54:08</p> <p>20 And these are your handwritten notes on this page as 11:54:14</p> <p>21 well, right? 11:54:17</p> <p>22 <b>A. Okay.</b> 11:54:23</p> <p>23 Q. Do you know when you made them? 11:54:25</p> <p>24 <b>A. Not unless there's some date on it, no.</b> 11:54:27</p> <p>25 Q. In it there's some quotations. Let's look 11:54:33</p>	<p>1 whether I thought it was ridiculous or relevant, I 11:56:16</p> <p>2 made a point of copying it down and keeping notes as 11:56:23</p> <p>3 to why I thought it was ridiculous. 11:56:29</p> <p>4 Q. Each of these three points or at least the 11:56:34</p> <p>5 second and the third point have quotes around them. 11:56:36</p> <p>6 Did you write these down as he was saying them? 11:56:40</p> <p>7 <b>A. No, that wouldn't -- certain managers view</b> 11:56:42</p> <p>8 <b>things differently. Some wanted you to take notes as</b> 11:56:48</p> <p>9 <b>we spoke and others would -- and they would say, if</b> 11:56:53</p> <p>10 <b>you're not taking notes, you're not listening. There</b> 11:57:00</p> <p>11 <b>are other managers that tend to feel that, if you're</b> 11:57:03</p> <p>12 <b>taking notes while they're speaking, you're not</b> 11:57:07</p> <p>13 <b>listening to them, you're note-taking.</b> 11:57:10</p> <p>14 <b>So Dan Fontaine was one who was a notetaker.</b> 11:57:13</p> <p>15 <b>He wanted you to take notes as, if you don't, you're</b> 11:57:21</p> <p>16 <b>disrespecting me.</b> 11:57:25</p> <p>17 <b>Flatley was somebody that he wanted -- he made</b> 11:57:26</p> <p>18 <b>overt gestures and huge statements to make an</b> 11:57:33</p> <p>19 <b>impression. So if you were taking notes, you</b> 11:57:39</p> <p>20 <b>weren't -- you weren't getting the side show that he</b> 11:57:44</p> <p>21 <b>was putting on. So he wanted you to take note of what</b> 11:57:46</p> <p>22 <b>he was saying and not be taking notes at the same</b> 11:57:51</p> <p>23 <b>time.</b> 11:57:54</p> <p>24 Q. And below that, what are "Dan's Top 3"? 11:57:55</p> <p>25 What does that mean? 11:57:59</p>



Baker, Earl Donald

August 14, 2020

24 (Pages 90 to 93)

90	92
<p>1 <b>A. It's hard to say. I mean, it could be Dan</b> 11:58:06</p> <p>2 <b>Durrand. It could be Dan Fontaine.</b> 11:58:13</p> <p>3 <b>Q. Okay. But you don't know? You're</b> 11:58:15</p> <p>4 <b>reflecting -- is this input that Dan Fontaine provided</b> 11:58:19</p> <p>5 <b>to you?</b> 11:58:22</p> <p>6 <b>A. It could be.</b> 11:58:27</p> <p>7 <b>Q. Do you remember Dan Fontaine saying to you,</b> 11:58:30</p> <p>8 <b>"don't manage department micro strategic plan"?</b> 11:58:35</p> <p>9 <b>A. I don't recall a specific thing on the</b> 11:58:43</p> <p>10 <b>micro, but the strategic plan might refer to that --</b> 11:58:45</p> <p>11 <b>that paper you were talking about with the strategic</b> 11:58:54</p> <p>12 <b>initiatives.</b> 11:58:57</p> <p>13 <b>If that was the strategic plan that that</b> 11:58:57</p> <p>14 <b>referred to, then that would be Dan Fontaine, but that</b> 11:59:01</p> <p>15 <b>may be my note saying that he was requiring or wanting</b> 11:59:05</p> <p>16 <b>me to give him a strategic plan for the department.</b> 11:59:09</p> <p>17 <b>Q. Number 2 says, "categories realign tooling</b> 11:59:14</p> <p>18 <b>strategy concern expressed move to Houlton." Had</b> 11:59:19</p> <p>19 <b>Mr. Fontaine raised concerns about tooling strategies</b> 11:59:25</p> <p>20 <b>for Houlton?</b> 11:59:29</p> <p>21 <b>A. No. And that's the problem with</b> 11:59:31</p> <p>22 <b>forensically trying to look at notes and trying to</b> 11:59:34</p> <p>23 <b>discern what they say. You draw together different</b> 11:59:36</p> <p>24 <b>thoughts.</b> 11:59:44</p> <p>25 <b>Strategic -- we need tooling categories to</b> 11:59:45</p>	<p>1 for Dan Durrand? 12:01:29</p> <p>2 <b>A. I think, by reading the context, my guess</b> 12:01:31</p> <p>3 <b>would be that it was Dan Fontaine.</b> 12:01:36</p> <p>4 <b>Q. Okay. So now that we've looked at a number</b> 12:01:40</p> <p>5 <b>of handwritten notes and they all seem to be on lined</b> 12:01:46</p> <p>6 <b>paper. Do you recall how you -- how you made notes</b> 12:01:50</p> <p>7 <b>when you were working with -- at Smith &amp; Wesson?</b> 12:01:53</p> <p>8 <b>A. Yes. I had --</b> 12:01:56</p> <p>9 <b>MR. LEE: Objection. Objection to the form</b> 12:01:58</p> <p>10 <b>of the question, but you may answer.</b> 12:01:59</p> <p>11 <b>A. I had a notebook that I would keep notes</b> 12:02:03</p> <p>12 <b>in, and it was taken during one of my office</b> 12:02:11</p> <p>13 <b>break-ins. So I then got a smaller notebook. So that</b> 12:02:20</p> <p>14 <b>was my habit. But it's really hard to tell what these</b> 12:02:26</p> <p>15 <b>came from or where they came from.</b> 12:02:34</p> <p>16 <b>Q. Do you recall whether that smaller notebook</b> 12:02:36</p> <p>17 <b>was spiral bound on the left side?</b> 12:02:38</p> <p>18 <b>A. I still have it, so it was not --</b> 12:02:41</p> <p>19 <b>Q. It was -- pardon me?</b> 12:02:48</p> <p>20 <b>A. It was not spiral bound.</b> 12:02:50</p> <p>21 <b>Q. Was it bound up at the top --</b> 12:02:53</p> <p>22 <b>A. No.</b> 12:02:56</p> <p>23 <b>Q. -- like a legal pad?</b> 12:02:57</p> <p>24 <b>A. No.</b> 12:02:58</p> <p>25 <b>Q. How was it -- how was it kept together?</b> 12:03:01</p>
91	93
<p>1 <b>realize tooling strategies. That's the end of one</b> 11:59:49</p> <p>2 <b>thought. And then the thing on -- we've got a move to</b> 11:59:51</p> <p>3 <b>Houlton that we have to plan for, so these are issues</b> 12:00:01</p> <p>4 <b>that are going to come up.</b> 12:00:04</p> <p>5 <b>The tooling strategies that we had, they ran</b> 12:00:07</p> <p>6 <b>out of tools and then we'd make them. We had to have</b> 12:00:11</p> <p>7 <b>a strategic plan to have the Robo software predict</b> 12:00:15</p> <p>8 <b>where we were going. That's what that refers to.</b> 12:00:19</p> <p>9 <b>So when you jam them all together, it appears</b> 12:00:22</p> <p>10 <b>to say one thing that it's not saying.</b> 12:00:26</p> <p>11 <b>Q. Right. And were these goals that had been</b> 12:00:28</p> <p>12 <b>expressed by Mr. Fontaine?</b> 12:00:31</p> <p>13 <b>A. No. Again, Mr. Fontaine and Mr. Flatley</b> 12:00:33</p> <p>14 <b>had no expertise in tooling. Not to say that they</b> 12:00:37</p> <p>15 <b>weren't intelligent, bright in their own, I could not</b> 12:00:44</p> <p>16 <b>do everything they did, but their style of management</b> 12:00:48</p> <p>17 <b>was to utilize my expertise in tooling and to have me</b> 12:00:53</p> <p>18 <b>express my goals to them, and they would help me stay</b> 12:01:00</p> <p>19 <b>on track with completing those goals.</b> 12:01:05</p> <p>20 <b>But they didn't have tooling knowledge. They</b> 12:01:11</p> <p>21 <b>didn't know what needed to be done in the department.</b> 12:01:13</p> <p>22 <b>They would ask me what I felt needed done, and they</b> 12:01:18</p> <p>23 <b>would keep me on track to make sure we were on, you</b> 12:01:21</p> <p>24 <b>know, we were progressing towards those goals.</b> 12:01:24</p> <p>25 <b>Q. So do you think that these, the Top 3, is</b> 12:01:27</p>	<p>1 <b>A. It's bound on the right-hand side.</b> 12:03:03</p> <p>2 <b>Q. Okay. And you say you still have it. You</b> 12:03:06</p> <p>3 <b>still have the original notebook --</b> 12:03:10</p> <p>4 <b>A. Yes.</b> 12:03:12</p> <p>5 <b>Q. -- that these came from?</b> 12:03:12</p> <p>6 <b>A. Yes.</b> 12:03:13</p> <p>7 <b>Q. Okay.</b> 12:03:14</p> <p>8 <b>A. Well, not that these came from. These look</b> 12:03:14</p> <p>9 <b>like a full page, so I don't -- I don't have the</b> 12:03:16</p> <p>10 <b>notebook that this came from.</b> 12:03:18</p> <p>11 <b>Q. Okay. Let's go to Exhibit -- I'm sorry --</b> 12:03:20</p> <p>12 <b>Bates page 338. Are all these notes that you took?</b> 12:03:38</p> <p>13 <b>A. Yes.</b> 12:03:46</p> <p>14 <b>Q. And do you know what you're taking notes</b> 12:03:47</p> <p>15 <b>from or during?</b> 12:03:52</p> <p>16 <b>MR. LEE: Objection, form, but you may</b> 12:03:55</p> <p>17 <b>answer.</b> 12:03:57</p> <p>18 <b>A. No. It does not list where the notes were</b> 12:04:00</p> <p>19 <b>taken from.</b> 12:04:10</p> <p>20 <b>Q. There are a couple different, over on the</b> 12:04:11</p> <p>21 <b>-- on the right-hand side about an inch down, it says,</b> 12:04:15</p> <p>22 <b>"request by Dan," and then it says, on the left side,</b> 12:04:17</p> <p>23 <b>"Larry," and then "Dan," and then "Dan and Dan" at the</b> 12:04:20</p> <p>24 <b>end. Does that suggest to you that they were taken</b> 12:04:23</p> <p>25 <b>during a meeting with both Larry and Dan?</b> 12:04:26</p>

Baker, Earl Donald

August 14, 2020

25 (Pages 94 to 97)

94	96
<p>1 <b>A. It's possible.</b> 12:04:29</p> <p>2 Q. Let's go to page 339. There's some 12:04:32</p> <p>3 handwritten notes on this page also. Are those your 12:04:40</p> <p>4 handwritten notes? 12:04:43</p> <p>5 <b>A. Yes.</b> 12:04:44</p> <p>6 Q. And do you know when they were taken? 12:04:45</p> <p>7 <b>A. No, I don't.</b> 12:04:48</p> <p>8 Q. And do you recall in what context they were 12:04:51</p> <p>9 taken? 12:04:54</p> <p>10 <b>A. No, I don't.</b> 12:04:54</p> <p>11 Q. And did you take the notes also on page 12:05:07</p> <p>12 340? 12:05:10</p> <p>13 <b>A. Yes.</b> 12:05:11</p> <p>14 Q. And do you know when those were taken? 12:05:13</p> <p>15 <b>A. No, I don't. I -- I also took notes of</b> 12:05:17</p> <p>16 <b>my -- my own action items, so ...</b> 12:05:27</p> <p>17 Q. You also took notes when? I'm sorry. 12:05:31</p> <p>18 <b>A. On -- on my -- on my own for -- the action</b> 12:05:33</p> <p>19 <b>items for the day. So these don't necessarily mean</b> 12:05:37</p> <p>20 <b>that I was in a meeting with anybody.</b> 12:05:39</p> <p>21 Q. Right. I understand. So you got 341, and 12:05:41</p> <p>22 those are your notes as well? 12:05:45</p> <p>23 <b>A. Yes.</b> 12:05:46</p> <p>24 Q. Do you know when they were made? 12:05:47</p> <p>25 <b>A. No, I don't, but they refer to making lists</b> 12:05:53</p>	<p>1 <b>his father was a machinist as well.</b> 12:07:42</p> <p>2 <b>So Bob was one that not only had the -- the</b> 12:07:46</p> <p>3 <b>acumen learned through higher education, but he also</b> 12:07:54</p> <p>4 <b>worked his way up. So he -- he had specific knowledge</b> 12:08:01</p> <p>5 <b>about machining and -- and how things are done.</b> 12:08:10</p> <p>6 Q. So do you recall whether he started 12:08:14</p> <p>7 providing coaching to you before your February review? 12:08:17</p> <p>8 <b>A. I have to explain something that, in -- in</b> 12:08:29</p> <p>9 <b>my field, if you're not learning and progressing, the</b> 12:08:38</p> <p>10 <b>field is changing just like the computer field. If</b> 12:08:41</p> <p>11 <b>you took a computer course in, let's say, 1991, when I</b> 12:08:44</p> <p>12 <b>started my business, if you didn't keep learning with</b> 12:08:51</p> <p>13 <b>the computer field, what you knew would be outmoded in</b> 12:08:55</p> <p>14 <b>a short amount of time.</b> 12:08:59</p> <p>15 <b>So the field we're in, it was continuous</b> 12:09:01</p> <p>16 <b>learning. So I would consider Bob a mentor. Anyone</b> 12:09:04</p> <p>17 <b>that had knowledge that was in a different sphere that</b> 12:09:11</p> <p>18 <b>was not my own, I -- and I had good interaction with</b> 12:09:13</p> <p>19 <b>them, I would consider them somewhat of a mentor.</b> 12:09:18</p> <p>20 <b>So I learned a lot from Bob just on daily</b> 12:09:22</p> <p>21 <b>interactions. Then it became more formal after the</b> 12:09:27</p> <p>22 <b>February review where I was mandated to actually have</b> 12:09:31</p> <p>23 <b>classes with him. And then Bob would actually give me</b> 12:09:34</p> <p>24 <b>books to read and -- and have sit-down meetings where</b> 12:09:38</p> <p>25 <b>we would discuss things.</b> 12:09:43</p>
95	97
<p>1 <b>of the Robo report.</b> 12:06:14</p> <p>2 MR. LEE: Where are you, on page 341? 12:06:19</p> <p>3 MS. BERTRAM: 341. 12:06:22</p> <p>4 Q. So you don't know in what context these 12:06:24</p> <p>5 notes were made, right? 12:06:27</p> <p>6 <b>A. No, but they -- they are incomplete</b> 12:06:27</p> <p>7 <b>thoughts, so they are probably notes I was just taking</b> 12:06:29</p> <p>8 <b>for myself, because it doesn't -- there's not enough</b> 12:06:32</p> <p>9 <b>of a complete thought to even determine what exactly I</b> 12:06:36</p> <p>10 <b>was talking about, you know, seven years later.</b> 12:06:41</p> <p>11 Q. So you mentioned Mr. Francis earlier. Did 12:06:49</p> <p>12 Mr. Francis provide any coaching to you during the 12:06:52</p> <p>13 course of your employment with Smith -- 12:06:54</p> <p>14 Smith &amp; Wesson? 12:06:55</p> <p>15 <b>A. Yes. I'd have to say Bob Francis was</b> 12:06:56</p> <p>16 <b>probably the brightest individual I met there.</b> 12:07:04</p> <p>17 Q. And when did you first start working with 12:07:05</p> <p>18 him? 12:07:08</p> <p>19 <b>A. I can't remember the first time I met him,</b> 12:07:08</p> <p>20 <b>but he -- he had a similar background from me in that</b> 12:07:11</p> <p>21 <b>many of the managers had never operated a machine or</b> 12:07:20</p> <p>22 <b>kind of worked their way up. They had gone to college</b> 12:07:28</p> <p>23 <b>and they had no expertise of what I was actually</b> 12:07:30</p> <p>24 <b>doing, whereas Bob kind of worked his way up through</b> 12:07:35</p> <p>25 <b>the ranks. I believe he worked with his father, and</b> 12:07:39</p>	<p>1 <b>So I mention all that to say that what I</b> 12:09:45</p> <p>2 <b>learned from Bob or -- was an ongoing thing from the</b> 12:09:49</p> <p>3 <b>time I met him, because I -- I deemed him as somebody</b> 12:09:53</p> <p>4 <b>that was quite knowledgeable and I could glean</b> 12:09:57</p> <p>5 <b>information from and -- and learn things from.</b> 12:10:02</p> <p>6 <b>So he taught me things from the first day I met</b> 12:10:06</p> <p>7 <b>him in how he interacted with people. So that just --</b> 12:10:10</p> <p>8 <b>I mean, it started out informally but then more</b> 12:10:18</p> <p>9 <b>formally later.</b> 12:10:21</p> <p>10 Q. Let's focus on the period prior to 12:10:22</p> <p>11 February, you know, the February 2014 review. When 12:10:26</p> <p>12 did you first start working informally with 12:10:30</p> <p>13 Mr. Francis? 12:10:35</p> <p>14 MR. LEE: Objection to the form of the 12:10:36</p> <p>15 question, but you may answer. 12:10:37</p> <p>16 <b>A. Bob, when I took over doing the pitch</b> 12:10:42</p> <p>17 <b>board, or more of a hands-on approach rather than</b> 12:10:49</p> <p>18 <b>turning it over to Jurga, I had to start interacting</b> 12:10:52</p> <p>19 <b>with Bob Francis to find out what was required.</b> 12:10:54</p> <p>20 <b>So I would say early on was -- was within the</b> 12:11:01</p> <p>21 <b>first month or two I started talking to Bob, but I</b> 12:11:06</p> <p>22 <b>don't know for a fact. I can't tell you the day that</b> 12:11:10</p> <p>23 <b>I -- I met him. And he was very open and -- and kind</b> 12:11:12</p> <p>24 <b>individual. So he was easy to -- to speak with.</b> 12:11:18</p> <p>25 Q. And do you recall -- do you recall any 12:11:25</p>

Baker, Earl Donald

August 14, 2020

26 (Pages 98 to 101)

98	100
<p>1 other coaching he provided to you prior to your 12:11:27</p> <p>2 February 2014 evaluation? 12:11:31</p> <p>3 <b>A. Absolutely. There are dozens of them, but 12:11:33</b></p> <p>4 <b>I don't know what -- I don't know that I could point 12:11:40</b></p> <p>5 <b>to them specifically. When we held a Unit A -- part 12:11:42</b></p> <p>6 <b>of my teaching style or managing style was to set 12:11:52</b></p> <p>7 <b>goals and get everybody marching in the same 12:11:57</b></p> <p>8 <b>direction. 12:12:01</b></p> <p>9 <b>So when we met those goals, there's a point 12:12:01</b></p> <p>10 <b>where you have to -- you take a step back and -- and 12:12:06</b></p> <p>11 <b>recognize the people in the department for the things 12:12:12</b></p> <p>12 <b>they have done. 12:12:16</b></p> <p>13 <b>So I would throw a lunch, and one of the 12:12:16</b></p> <p>14 <b>conference rooms that was available for the employees 12:12:19</b></p> <p>15 <b>for my whole department to meet at and have lunch was 12:12:23</b></p> <p>16 <b>in the swish -- "SWashroom," which was Smith &amp; Wesson 12:12:26</b></p> <p>17 <b>operating system's room -- which was in the annex of 12:12:30</b></p> <p>18 <b>Bob Francis' office. 12:12:38</b></p> <p>19 <b>So because we met there, it -- it's basically 12:12:40</b></p> <p>20 <b>part of his office, so there would be interactions 12:12:46</b></p> <p>21 <b>there. He would give us insight on where we needed to 12:12:49</b></p> <p>22 <b>go, you know, what his point of view was, but, again, 12:12:56</b></p> <p>23 <b>where I was more of an open book and -- and liked 12:13:00</b></p> <p>24 <b>to -- to get information from other people how they 12:13:04</b></p> <p>25 <b>were doing it, there were others that -- that didn't 12:13:10</b></p>	<p>1 12:30, if that works for the two of you. 12:14:53</p> <p>2 MR. LEE: Well, fifteen more minutes? 12:14:56</p> <p>3 That's fine. I mean -- 12:14:58</p> <p>4 <b>A. I'm good. 12:14:59</b></p> <p>5 Q. Okay. And so you -- you said -- you -- you 12:14:59</p> <p>6 said he mandated coaching. Is that Larry Flatley who 12:15:03</p> <p>7 mandated coaching on lean manufacturing? 12:15:06</p> <p>8 <b>A. Yes. There are -- there are a number of 12:15:09</b></p> <p>9 <b>documents that -- where he -- he wrote it. As a 12:15:11</b></p> <p>10 <b>matter of fact, he had already researched different 12:15:15</b></p> <p>11 <b>seminars to take, and actually had time set up that we 12:15:24</b></p> <p>12 <b>couldn't -- I don't know that you can even get into 12:15:31</b></p> <p>13 <b>these seminars, but here's a list of them, and -- and 12:15:35</b></p> <p>14 <b>then he told me, you're not going to want to do this 12:15:43</b></p> <p>15 <b>shit, that you should just quit. 12:15:49</b></p> <p>16 <b>So those seminars are written on that sheet and 12:15:54</b></p> <p>17 <b>there were a number of documents that show the 12:15:57</b></p> <p>18 <b>progress of those classes. 12:15:59</b></p> <p>19 Q. Did Mr. -- other than lean manufacturing, 12:16:02</p> <p>20 did Mr. Flatley mandate that you needed any other 12:16:07</p> <p>21 coaching from Mr. Fontaine -- I'm sorry, from 12:16:11</p> <p>22 Mr. Francis? 12:16:14</p> <p>23 <b>A. No, not that I know of. 12:16:17</b></p> <p>24 Q. And was there any other coaching that 12:16:19</p> <p>25 Mr. Francis provided to you after your February 2014 12:16:21</p>
99	101
<p>1 have that kind of style. They were more prideful and 12:13:15</p> <p>2 didn't want anyone telling them what to do, like 12:13:18</p> <p>3 Flatley. 12:13:22</p> <p>4 Q. And you said that after your February 2014 12:13:24</p> <p>5 review became -- the coaching became more formal; is 12:13:29</p> <p>6 that right? 12:13:35</p> <p>7 <b>A. Well, he -- he mandated it after February 12:13:35</b></p> <p>8 <b>that I do certain things as more of a remediation for 12:13:41</b></p> <p>9 <b>having a review that way. Even though it was deemed 12:13:44</b></p> <p>10 <b>not to be a formal review, Fontaine said it didn't 12:13:49</b></p> <p>11 <b>exist because it was out of cycle in response to 12:13:54</b></p> <p>12 <b>Mr. Suraci. 12:13:58</b></p> <p>13 <b>So I felt like, in order to make the situation 12:14:00</b></p> <p>14 <b>better, I did the -- I did the remediation things 12:14:08</b></p> <p>15 <b>regardless. And one of them was he wanted me to have 12:14:14</b></p> <p>16 <b>lean training, and there were no courses in the 12:14:21</b></p> <p>17 <b>syllabus of the seminars that Flatley had pointed me 12:14:25</b></p> <p>18 <b>to, so Flatley agreed to allow Francis to be the 12:14:29</b></p> <p>19 <b>source for that training. 12:14:37</b></p> <p>20 Q. And -- 12:14:38</p> <p>21 <b>A. We're getting close to lunch. Did you -- 12:14:40</b></p> <p>22 <b>have you planned a -- 12:14:42</b></p> <p>23 MR. LEE: Is there a good time or a subject 12:14:45</p> <p>24 matter like where you're going? 12:14:48</p> <p>25 MS. BERTRAM: I was planning to go to until 12:14:50</p>	<p>1 review other than the lean manufacturing coaching? 12:16:24</p> <p>2 <b>A. Yes. He helped and coached with the areas 12:16:27</b></p> <p>3 <b>of his expertise, which was lean. So when Flatley 12:16:32</b></p> <p>4 <b>would have problems with the pitch board, I usually 12:16:39</b></p> <p>5 <b>sought out instruction from Bob so that what Flatley 12:16:46</b></p> <p>6 <b>was asking was within the sphere and okay with Vice 12:16:54</b></p> <p>7 <b>President Francis. 12:16:59</b></p> <p>8 Q. Now did you also, after your -- after your 12:17:09</p> <p>9 June 2014 -- I'm sorry. After your June 2013 12:17:11</p> <p>10 evaluation and until February of 2014, the interim 12:17:15</p> <p>11 evaluation that you received, did you have discussions 12:17:20</p> <p>12 with human resources? 12:17:22</p> <p>13 <b>A. Yes. 12:17:24</b></p> <p>14 Q. And you contacted them because you thought 12:17:25</p> <p>15 that Mr. Flatley was being unfair to you, right? 12:17:29</p> <p>16 <b>A. Among other things. 12:17:33</b></p> <p>17 Q. And you felt that Mr. Flatley was 12:17:34</p> <p>18 mistreating you, correct? 12:17:37</p> <p>19 <b>A. Yeah, among other things. 12:17:38</b></p> <p>20 Q. And you related in your complaint to OSHA 12:17:40</p> <p>21 about a situation where you had gone to Urgent Care 12:17:45</p> <p>22 and because of that you missed a meeting. 12:17:51</p> <p>23 <b>A. Yes. 12:17:54</b></p> <p>24 Q. Did Mr. Flatley get upset with you about 12:17:54</p> <p>25 that? 12:17:57</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

27 (Pages 102 to 105)

	102		104	
1	A. Yes.	12:17:57	1 have been the first time I had went to speak with her.	12:21:12
2	Q. And that was around September of 2013,	12:17:57	2 Q. And the -- the conversation with Anne	12:21:17
3	right?	12:18:00	3 Bruce, was that with a group of people or were you	12:21:18
4	A. Either August or September.	12:18:01	4 talking to her individually?	12:21:21
5	Q. Okay. And your complaint indicates that	12:18:04	5 A. Yes, it was -- it was a presentation she	12:21:22
6	you reported that conversation with Mr. Flatley to HR;	12:18:10	6 made to all salaried people.	12:21:24
7	is that right?	12:18:16	7 Q. And what concern -- when you went and spoke	12:21:29
8	A. That's correct.	12:18:16	8 with Ann and Kathy, what concerns did you have about	12:21:32
9	Q. Who did -- was that the first time you had	12:18:17	9 your salary?	12:21:35
10	reached out to HR about Mr. Flatley?	12:18:20	10 A. I felt that the -- Anne Bruce said that	12:21:36
11	A. I don't believe it was the first time, no,	12:18:22	11 they were going to stop doing merit raises where they	12:21:45
12	but it was one of the more notable times, yes.	12:18:28	12 just gave -- so it was basically the friend network.	12:21:48
13	Q. Okay. And do you recall the first time	12:18:32	13 You couldn't have a buddy that you -- that worked with	12:21:52
14	that you reached out to HR about -- with concerns	12:18:34	14 you, and you're just going to be given raises, that	12:21:54
15	about Mr. Flatley?	12:18:37	15 they were going to be structured within her system and	12:21:57
16	A. I think it was in the -- it would be a few	12:18:39	16 they would be -- there would be no more merit raises,	12:22:00
17	months earlier than that. It would have been the	12:18:43	17 but that everyone would get a certain raise at certain	12:22:03
18	summer of 2013.	12:18:47	18 intervals based on market rates of people doing that	12:22:06
19	Q. Okay.	12:18:52	19 job within your city and compared nationally.	12:22:11
20	A. But the exact date I'm -- without --	12:18:53	20 So the question was asked by another CC, what	12:22:16
21	without access to my computer at work and those type	12:18:58	21 about people who have only been there for a short	12:22:21
22	of things, it's some years later, it's hard to -- to	12:19:01	22 period of time, would they be eligible for that, and	12:22:23
23	say exactly.	12:19:05	23 the answer Ms. Bruce gave was affirmative.	12:22:26
24	Q. And who did you -- who did you reach out to	12:19:06	24 So when I got that good review, I did not get	12:22:30
25	at HR at that point in the summer of 2013?	12:19:10	25 the -- the cost of living raise that others got. I	12:22:34

	103		105	
1	A. I went to Ann Glica or Glica, I'm not sure	12:19:12	1 was close enough with some of the other CCs that they	12:22:41
2	how you pronounce it, and she -- I spoke with her	12:19:18	2 had told me they had gotten their raise but I had not.	12:22:43
3	first, and at that point we were -- she was meeting in	12:19:25	3 I went to Ann over the fact that I hadn't got	12:22:47
4	the -- their offices were being renovated, so we met	12:19:29	4 that raise, and we discussed why I believed it was	12:22:54
5	in the -- they had mobile offices put in the parking	12:19:33	5 unfair and that I felt that it was possibly an	12:22:59
6	lot.	12:19:35	6 outgrowth of the growing animosity that I -- that	12:23:03
7	So I met Ann in one of those trailers. And	12:19:36	7 Flatley was displaying towards me relative to the	12:23:07
8	because her office wasn't an office -- it was more	12:19:41	8 Pioneer Tool issues that were occurring.	12:23:13
9	just like a cubicle in that trailer, we discussed some	12:19:45	9 So we went into the issues at EASTEC and some	12:23:18
10	things that she felt maybe rose to the level of	12:19:48	10 of the tooling things where they were giving -- given	12:23:24
11	speaking with her boss, Kathy Salvador, which was in	12:19:54	11 favoritism over other companies and whereby there were	12:23:29
12	the next cubicle.	12:19:57	12 actual charges that he -- that they should have been	12:23:32
13	Q. Okay.	12:19:58	13 billed for or given us a -- they should have actually	12:23:38
14	A. So at that time Kristan Campanella and --	12:19:59	14 given us refund on some issues, and Flatley refused to	12:23:45
15	and the other HR people were not in that trailer, so	12:20:05	15 do so. So he was acting unilaterally to wipe off	12:23:49
16	it was just basically Ann and Kathy. And so Kathy	12:20:11	16 bills for Pioneer that -- that he had no authority to	12:23:54
17	then took over. We -- we discussed issues relating to	12:20:15	17 do, and I --	12:24:00
18	my pay increase. That would have happened right	12:20:22	18 Q. Did you --	12:24:04
19	around that good review in summer of 2013.	12:20:25	19 A. I'm sorry. And I felt that was -- that was	12:24:05
20	Q. So it would have been -- was it before or	12:20:41	20 part of the growing animosity between Flatley and	12:24:07
21	after your evaluation in June of 2013?	12:20:44	21 myself, and I thought that me not receiving that raise	12:24:14
22	A. That would have been right after, because	12:20:47	22 was -- was an outgrowth of the growing disfavor he had	12:24:18
23	there was a meeting that Ann Glica -- I'm sorry --	12:20:49	23 for -- for me opposing him on Pioneer.	12:24:24
24	Anne Bruce had spoke to us about relative to pay, and	12:20:58	24 Q. And do you recall any other issues that you	12:24:29
25	those things hadn't occurred, so that's was -- would	12:21:04	25 raised with Ms. Salvador or Ms. Glica?	12:24:31

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

28 (Pages 106 to 109)

106	108
<p>1 A. Any other issues other than what? 12:24:37</p> <p>2 Q. Other than what you've already described in 12:24:39</p> <p>3 your testimony. 12:24:41</p> <p>4 A. I mentioned the issue over the -- when we 12:24:42</p> <p>5 first went to the barbecue at EASTEC, we went to the 12:24:49</p> <p>6 conference during the day or the trade show, and then 12:24:53</p> <p>7 we were invited afterwards to Pioneer Tool for a 12:24:57</p> <p>8 barbecue. 12:25:02</p> <p>9 At that barbecue I went with Stan Wnuk and 12:25:04</p> <p>10 Larry Flatley, and Larry Flatley told me that, if you 12:25:08</p> <p>11 come back tomorrow night, you'll be the highest paid 12:25:16</p> <p>12 or the highest ranking Smith &amp; Wesson employee and 12:25:21</p> <p>13 you'll be sure to win something. And I thought it was 12:25:25</p> <p>14 a joke. I laughed, and I didn't, you know, I didn't 12:25:28</p> <p>15 give it much thought. 12:25:32</p> <p>16 But I related that incident and the fact that 12:25:36</p> <p>17 when the driver came to my office with an iPad and 12:25:41</p> <p>18 attempted to hand it to me and said Flatley had won 12:25:46</p> <p>19 something, I said, that's not my office, I told him 12:25:51</p> <p>20 where the office was, I wouldn't take it, and so I 12:25:56</p> <p>21 reported that incident to them. And -- 12:26:01</p> <p>22 Q. Other -- 12:26:07</p> <p>23 A. Go ahead. 12:26:07</p> <p>24 Q. Other than the incidents surrounding 12:26:07</p> <p>25 EASTEC, the iPad interaction, the refund that was 12:26:14</p>	<p>1 and we came up with what turned into be a \$9,000 12:28:02</p> <p>2 refund by Pioneer, but that refund was not -- it 12:28:09</p> <p>3 didn't ever address the ones that Burry said he should 12:28:18</p> <p>4 have got. 12:28:22</p> <p>5 So there was a charge there that they should 12:28:23</p> <p>6 have refunded us for that they did not, and it was in 12:28:25</p> <p>7 the tens of thousands of dollars, and it was never 12:28:29</p> <p>8 addressed and Flatley let it go. 12:28:32</p> <p>9 So there was that issue. There was another 12:28:35</p> <p>10 issue that had to do with a Counter Sixth that they 12:28:38</p> <p>11 sent in and Joe -- there's a document on it -- Joe 12:28:42</p> <p>12 Coddington mentioned that they did not work and it was 12:28:46</p> <p>13 scrapping parts. 12:28:50</p> <p>14 So we went to the RoboCrib and every tool in 12:28:51</p> <p>15 the RoboCrib was -- was bad. They were made by 12:28:56</p> <p>16 Pioneer. After checking a certain number of tools, I 12:28:59</p> <p>17 instructed Joe to send them back to Pioneer for 12:29:03</p> <p>18 repair. He did so. They charged us for those tools 12:29:07</p> <p>19 again, even though they -- they should not have been 12:29:12</p> <p>20 charged. They should have repaired them. 12:29:16</p> <p>21 And then Flatley told me that I -- not to bill 12:29:20</p> <p>22 them for it. I -- I said that we shouldn't have -- 12:29:26</p> <p>23 or, I mean, not to ask for the refund, just let it 12:29:29</p> <p>24 alone, it's not my area. 12:29:32</p> <p>25 So the tools that then they had returned were 12:29:34</p>
107	109
<p>1 refused, and the wiping off of bills, did you raise 12:26:19</p> <p>2 any other concerns with Ms. Glica or Ms. Salvador 12:26:23</p> <p>3 during that meeting? 12:26:28</p> <p>4 A. Yes. We -- we talked about the fact that 12:26:29</p> <p>5 Josh Burry had a -- one month where he was charged 12:26:33</p> <p>6 \$63,000 by -- by Pioneer. We -- I talked to Larry at 12:26:39</p> <p>7 EASTEC and said -- Burry's complaint was that, when he 12:26:49</p> <p>8 goes to vend a tool, he opens the door and nothing is 12:26:55</p> <p>9 in there, but when that vending takes place, we 12:26:58</p> <p>10 instantly get charged. 12:27:01</p> <p>11 The tools he was talking about were \$300 to 12:27:03</p> <p>12 \$400 each, and he felt that that was a problem in 12:27:08</p> <p>13 causing the -- his bill to be that high that month, 12:27:12</p> <p>14 that many of the charges were unfounded. 12:27:16</p> <p>15 So he's making the claim. I have no way to 12:27:18</p> <p>16 verify whether that was or wasn't happening. Flatley 12:27:24</p> <p>17 could not either. So I mentioned at the -- the trade 12:27:27</p> <p>18 show booth with Larry that, if that was in fact 12:27:30</p> <p>19 happening, that there were bins that were empty, that 12:27:35</p> <p>20 there would likely be more bins that would be empty in 12:27:40</p> <p>21 that RoboCrib. There were a thousand -- possibly a 12:27:44</p> <p>22 thousand tools in that RoboCrib. If that happened to 12:27:46</p> <p>23 the extent he was saying, just by sheer statistics, 12:27:50</p> <p>24 there should be more empty bins. 12:27:53</p> <p>25 So he allowed me to go through and vend tools, 12:27:55</p>	<p>1 still bad. So I took them out of the vending machine 12:29:41</p> <p>2 and fixed them at no charge. And then there was an 12:29:45</p> <p>3 interaction between Flatley and I over -- over that 12:29:49</p> <p>4 issue where he mandated I couldn't pull tools anymore. 12:29:53</p> <p>5 The issue there was -- and Mr. Cicero 12:29:58</p> <p>6 mentioned -- they shouldn't -- that I shouldn't have 12:30:04</p> <p>7 repaired those tools. Anytime it can shut down 12:30:07</p> <p>8 production, I'm mandated to fix the tools. I can't 12:30:11</p> <p>9 wait for the vendor to come in and fix their tools. 12:30:15</p> <p>10 Production takes precedence over everything. 12:30:19</p> <p>11 So I know I've said more than what your 12:30:23</p> <p>12 question was. I apologize. 12:30:26</p> <p>13 Q. And was it your understanding that the 12:30:27</p> <p>14 tools that needed to be repaired were on consignment? 12:30:29</p> <p>15 A. There -- they provided multiple tools for 12:30:34</p> <p>16 us. If they were put in the RoboCrib to be vended 12:30:38</p> <p>17 out, then those are consignment. But if they deliver 12:30:44</p> <p>18 them and they're to be put in Crib 99, then it is not 12:30:48</p> <p>19 consignment, it's -- they are -- they are tools that 12:30:53</p> <p>20 we will put in as burned. So we buy them all. And in 12:30:59</p> <p>21 the case where it's something that we own that they 12:31:02</p> <p>22 resharpen, it would probably have not been a 12:31:05</p> <p>23 consignment order. They were just sharpening a tool 12:31:08</p> <p>24 that belonged to us. 12:31:11</p> <p>25 Q. Were the -- in this particular instance 12:31:13</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

29 (Pages 110 to 113)

110	112
<p>1 where the -- where you went in and performed repairs 12:31:18</p> <p>2 at no charge, were they in the RoboCrib or Crib 99? 12:31:21</p> <p>3 <b>A. I can't recall at this time.</b> 12:31:25</p> <p>4 Q. Okay. Did you raise any other concerns 12:31:26</p> <p>5 during this initial meeting with Ms. Salvador and 12:31:30</p> <p>6 Ms. Glica about any actions or actions by Larry 12:31:34</p> <p>7 Flatley? 12:31:40</p> <p>8 <b>A. There weren't issues -- well, they -- they</b> 12:31:42</p> <p>9 <b>had to do with -- there were no more issues that came</b> 12:31:47</p> <p>10 <b>up, let's put it that way, and I can't tell you</b> 12:31:53</p> <p>11 <b>everything that I mentioned, but I -- those are the</b> 12:31:55</p> <p>12 <b>major ones, and I can't say that it's inclusive, but</b> 12:31:58</p> <p>13 <b>basically I did feel that there was a favoritism</b> 12:32:03</p> <p>14 <b>towards one vendor and that I felt like some of the</b> 12:32:08</p> <p>15 <b>decisions that Mr. Flatley was making was not in the</b> 12:32:14</p> <p>16 <b>best interest of Smith &amp; Wesson and -- and its</b> 12:32:17</p> <p>17 <b>shareholders but had to do with some outside influence</b> 12:32:20</p> <p>18 <b>that did not -- was not in line with what the</b> 12:32:23</p> <p>19 <b>normal -- normal fiduciary relationship of a manager</b> 12:32:32</p> <p>20 <b>to his company.</b> 12:32:36</p> <p>21 MS. BERTRAM: Let's go ahead and take a 12:32:40</p> <p>22 break. It's 12:33. 12:32:42</p> <p>23 MR. LEE: Okay. 12:32:44</p> <p>24 MS. BERTRAM: How -- how long -- how long 12:32:45</p> <p>25 do you need for lunch?</p>	<p>1 respect to your salary? 13:30:06</p> <p>2 <b>A. According to Ms. Bruce's talk, she wanted</b> 13:30:07</p> <p>3 <b>to take the subjectivity out of it so make it more</b> 13:30:13</p> <p>4 <b>streamlined so it would follow a set, set of rules.</b> 13:30:19</p> <p>5 <b>So that was the initial reason I went there, but I --</b> 13:30:22</p> <p>6 <b>in a short period of time -- I don't have the emails</b> 13:30:28</p> <p>7 <b>so I can't tell you when she did -- but I got an email</b> 13:30:30</p> <p>8 <b>from Salvador saying that you got your raise in your</b> 13:30:33</p> <p>9 <b>last check, that it had been setting on Larry's desk.</b> 13:30:39</p> <p>10 <b>So that made it seem as if, my impression was</b> 13:30:45</p> <p>11 <b>that it wasn't retaliatory based on her thing that --</b> 13:30:50</p> <p>12 <b>but with some oversight from Flatley, but she did,</b> 13:30:54</p> <p>13 <b>yeah, by then we had -- we had already entered in --</b> 13:31:01</p> <p>14 <b>into the phase where I told her the things that I</b> 13:31:05</p> <p>15 <b>believed were -- were wrong and -- and that became an</b> 13:31:08</p> <p>16 <b>ongoing thing. There was an incident later on that</b> 13:31:14</p> <p>17 <b>caused me to talk to them again.</b> 13:31:19</p> <p>18 Q. Okay. Well, we'll get to that in a minute. 13:31:21</p> <p>19 I just want to -- 13:31:25</p> <p>20 <b>A. Okay.</b> 13:31:25</p> <p>21 Q. -- close out the initial discussions. 13:31:25</p> <p>22 So you talked about your discussions with 13:31:27</p> <p>23 Ms. Glica and Ms. Salvador. Did you provide any 13:31:30</p> <p>24 documents to them at that point? 13:31:33</p> <p>25 <b>A. No, not at that point.</b> 13:31:34</p>
111	113
<p>1 MR. LEE: I need to run out. So how about 12:32:47</p> <p>2 like -- I would like maybe 40 minutes instead of the 12:32:49</p> <p>3 normal half an hour, but whatever is good. 12:32:51</p> <p>4 Earl, you're home, right? Earl doesn't need to 12:32:54</p> <p>5 run out. 12:32:57</p> <p>6 THE WITNESS: Yeah. 12:32:58</p> <p>7 MR. LEE: Okay. 12:32:59</p> <p>8 MS. BERTRAM: So let's -- let's plan on 12:32:59</p> <p>9 1:15, then. 12:33:02</p> <p>10 MR. LEE: 1:15 would be fine. So 45 12:33:05</p> <p>11 minutes from now or 42 minutes from now. 12:33:05</p> <p>12 VIDEO SPECIALIST: The time is 12:33 p.m., 12:33:10</p> <p>13 and we're off the record. 12:33:10</p> <p>14 (Proceedings recessed) 12:33:11</p> <p>15 VIDEO SPECIALIST: The time is 1:30 p.m., 13:29:26</p> <p>16 and we're back on the record. 13:29:40</p> <p>17 EXAMINATION (continued) 13:29:44</p> <p>18 BY MS. BERTRAM: 13:29:45</p> <p>19 Q. Mr. Baker, before we took our lunch break, 13:29:46</p> <p>20 you were talking about a meeting that you had with 13:29:48</p> <p>21 Ms. Glica and Ms. Salvador. You indicated that you 13:29:50</p> <p>22 felt that the lack of a salary increase may have been 13:29:55</p> <p>23 retaliatory, right? 13:29:59</p> <p>24 <b>A. Yeah, I thought so.</b> 13:30:00</p> <p>25 Q. And do you know who made the decision with 13:30:03</p>	<p>1 Q. Did you identify any witnesses that they 13:31:36</p> <p>2 should talk to? 13:31:38</p> <p>3 <b>A. Yes, I did mention a couple of people that</b> 13:31:39</p> <p>4 <b>had told me things that, in my view, of how I was</b> 13:31:43</p> <p>5 <b>telling them, I didn't feel like I had, you know, had</b> 13:31:50</p> <p>6 <b>all of this all wrapped up with a bow, that these were</b> 13:31:54</p> <p>7 <b>things that they needed to look into and investigate.</b> 13:31:58</p> <p>8 <b>So I had mentioned what was told to me by, you</b> 13:32:01</p> <p>9 <b>know, different people throughout the shop and some of</b> 13:32:08</p> <p>10 <b>those things, and -- but I didn't have any documents.</b> 13:32:12</p> <p>11 <b>So there -- there certainly would have been follow-up</b> 13:32:16</p> <p>12 <b>people for them to talk to.</b> 13:32:18</p> <p>13 Q. And which -- which witnesses did you 13:32:20</p> <p>14 identify during the meeting? 13:32:23</p> <p>15 <b>A. I can't really recall. I mean, it's so</b> 13:32:25</p> <p>16 <b>long ago. And also you have to remember that this</b> 13:32:30</p> <p>17 <b>unfolded in a series of meetings with them, so to</b> 13:32:33</p> <p>18 <b>differentiate what happened in the third meeting as</b> 13:32:38</p> <p>19 <b>opposed to what happened in the first meeting, I can't</b> 13:32:41</p> <p>20 <b>really say for sure.</b> 13:32:45</p> <p>21 <b>So I don't know which guys that I mentioned --</b> 13:32:48</p> <p>22 <b>I know that Lamont Parks had mentioned some things to</b> 13:32:52</p> <p>23 <b>me, Josh Burry, Leo Jendrezak, he mentioned some</b> 13:32:56</p> <p>24 <b>things, Stanley Kapek, but, again, I can't tell you</b> 13:33:04</p> <p>25 <b>which ones I mentioned in that initial meeting.</b> 13:33:12</p>

Baker, Earl Donald

August 14, 2020

30 (Pages 114 to 117)

<p style="text-align: right;">114</p> <p>1 Q. Okay. And did you specifically ask 13:33:15</p> <p>2 Ms. Bruce or Ms. Salvador to investigate the issues of 13:33:18</p> <p>3 Pioneer Tool? 13:33:22</p> <p>4 MR. LEE: Objection to the form of the 13:33:22</p> <p>5 question. Not Ms. Bruce, Ms. Glica, if -- 13:33:23</p> <p>6 Q. Okay. Let me -- let me withdraw that and 13:33:28</p> <p>7 restate the question. 13:33:30</p> <p>8 In your discussions with Ms. Glica and 13:33:31</p> <p>9 Ms. Salvador, did you specifically ask them to 13:33:35</p> <p>10 investigate the issues surrounding Larry's 13:33:38</p> <p>11 relationship with Pioneer Tool? 13:33:41</p> <p>12 A. No, it wasn't a request on my part. We had 13:33:42</p> <p>13 undergone a training called LRN that mentioned how we 13:33:47</p> <p>14 should go to an official of the company and tell them 13:33:52</p> <p>15 the things that we wanted, but it never became a 13:33:57</p> <p>16 question of me asking because before I had -- would 13:33:59</p> <p>17 even have gotten to that point, Ann referred me to 13:34:02</p> <p>18 Ms. Salvador because she felt that my boss needs to 13:34:06</p> <p>19 hear this and you need to talk to Kathy. 13:34:10</p> <p>20 So I was unaware of it and had the impression 13:34:14</p> <p>21 that Kathy was somewhat listening from the other 13:34:18</p> <p>22 cubicle anyways, so we stepped right into the 13:34:20</p> <p>23 conversation, and she was the one that instructed me 13:34:23</p> <p>24 that, we're going to look into this, but I don't want 13:34:27</p> <p>25 you to tell anyone about the Pioneer/vendor aspect 13:34:32</p>	<p style="text-align: right;">116</p> <p>1 Q. Right. And do you know whether they, 13:36:08</p> <p>2 either they or someone else they notified, undertook 13:36:12</p> <p>3 an investigation at that point? 13:36:15</p> <p>4 A. No, not that I know of. They -- they were 13:36:17</p> <p>5 urging me to take it to Dan Fontaine, and I had some 13:36:21</p> <p>6 reluctance at that point because I felt like it would 13:36:27</p> <p>7 escalate to the point where, yeah, it just might get 13:36:34</p> <p>8 out of control. So I didn't want to do more by going 13:36:39</p> <p>9 to Dan Fontaine. 13:36:44</p> <p>10 Then after subsequent things that happened 13:36:46</p> <p>11 between Larry and I where I did go back to them, they 13:36:51</p> <p>12 urged me more strongly to consider the option of going 13:36:55</p> <p>13 to Mr. Fontaine. 13:36:58</p> <p>14 Q. Right. And I had asked about whether they 13:36:58</p> <p>15 had done any investigation of -- of your concerns 13:37:03</p> <p>16 about Pioneer, and you indicated you weren't aware of 13:37:05</p> <p>17 it. Is it possible they did do some things or the 13:37:09</p> <p>18 company did some things at that point to investigate 13:37:15</p> <p>19 and you just don't know what it is? 13:37:16</p> <p>20 MR. LEE: Objection to the form of the 13:37:18</p> <p>21 question, calls for speculation. He's already 13:37:19</p> <p>22 answered. He doesn't know. 13:37:22</p> <p>23 Q. You can answer the question. 13:37:27</p> <p>24 A. I'm not sure -- 13:37:32</p> <p>25 John, should I -- am I supposed to answer? 13:37:35</p>
<p style="text-align: right;">115</p> <p>1 of -- of the things you've told me. We're going to 13:34:39</p> <p>2 handle that in a different way, because we have to 13:34:42</p> <p>3 really discuss how we're going to proceed with that. 13:34:47</p> <p>4 So she said we can talk openly about the HR 13:34:50</p> <p>5 ramifications or your mistreatment, but I want you to 13:34:57</p> <p>6 keep that part quiet because we don't even know who 13:35:01</p> <p>7 might be involved. 13:35:04</p> <p>8 Q. And do you know -- I mean, you've 13:35:09</p> <p>9 discussed -- let me back up a little bit. 13:35:14</p> <p>10 Do you know whether they notified anyone, 13:35:15</p> <p>11 Ms. Glica or Ms. Salvador, notified anyone about your 13:35:19</p> <p>12 concerns about Pioneer Tool? 13:35:23</p> <p>13 A. Not that I'm aware of. 13:35:25</p> <p>14 Q. Did they ask you to do anything with 13:35:31</p> <p>15 respect to those concerns other than not to discuss 13:35:34</p> <p>16 them? 13:35:36</p> <p>17 A. No. They did send an email a couple of 13:35:36</p> <p>18 different times. One that stands out in my mind where 13:35:40</p> <p>19 they asked how things are going in that regard, which 13:35:44</p> <p>20 made me think that possibly they were doing things on 13:35:47</p> <p>21 the other side of things that may not be in my view or 13:35:52</p> <p>22 wondering if it was having a positive effect, but that 13:35:57</p> <p>23 was my impression. But they never told me what they 13:36:00</p> <p>24 were doing. They just kind of asked how was -- how 13:36:03</p> <p>25 were things proceeding on my end. 13:36:07</p>	<p style="text-align: right;">117</p> <p>1 MR. LEE: Yeah. Have the question read 13:37:37</p> <p>2 back, please. 13:37:39</p> <p>3 Q. I'll -- I'll rephrase it and make it 13:37:40</p> <p>4 shorter, if nothing else. 13:37:43</p> <p>5 Do you know whether or not Ms. Salvador and 13:37:46</p> <p>6 Ms. Glica undertook any investigation after you 13:37:51</p> <p>7 provided this information concerning Pioneer Tool? 13:37:56</p> <p>8 A. Ms. Glica and Ms. Salvador I -- I feel or 13:37:58</p> <p>9 felt at the time was -- they were very professional 13:38:02</p> <p>10 and did not divulge anything they were doing on the 13:38:05</p> <p>11 other side. They took my submissions to them, a lot 13:38:09</p> <p>12 of the things I told them, and I had the impression 13:38:16</p> <p>13 that they were, because it was in their -- it was in 13:38:18</p> <p>14 their mind enough to ask me how things were going. 13:38:22</p> <p>15 So it wasn't something that they had dismissed 13:38:25</p> <p>16 that I felt they were -- it was still on their mind, 13:38:27</p> <p>17 so my impression was that they were probably working 13:38:31</p> <p>18 on it, but I don't feel they owed me an answer. This 13:38:34</p> <p>19 had to do with things that were happening against the 13:38:39</p> <p>20 company interests, not so much with me, and that the 13:38:44</p> <p>21 only thing that pertained to me was my interpersonal 13:38:49</p> <p>22 relationships with -- with Larry so that any issue 13:38:53</p> <p>23 pertaining to Pioneer really is between the company 13:38:57</p> <p>24 and Pioneer and not me. And that was just my 13:39:01</p> <p>25 impression. They never said that. 13:39:04</p>

Baker, Earl Donald

August 14, 2020

31 (Pages 118 to 121)

118	120
<p>1 Q. You said that there came a time when you 13:39:06</p> <p>2 spoke with them again. You said something else 13:39:09</p> <p>3 happened. What happened that caused you to reach out 13:39:13</p> <p>4 to Ms. Glica and/or Ms. Salvador again? 13:39:15</p> <p>5 A. There was one of the notes that you 13:39:18</p> <p>6 mentioned about going to gun school earlier in this 13:39:22</p> <p>7 deposition. The revolver training was supposed to 13:39:26</p> <p>8 take place on a certain day. I had chest pains that 13:39:31</p> <p>9 day and went to the company nurse. They -- they 13:39:37</p> <p>10 wanted me to go to emergency and wanted to call an 13:39:41</p> <p>11 ambulance. I talked them out of the ambulance and 13:39:46</p> <p>12 asked if -- if I went straight to an Urgent Care 13:39:49</p> <p>13 Center, whether they would permit me to drive. 13:39:53</p> <p>14 I -- I then went down to Larry's secretary's 13:39:57</p> <p>15 office, Ms. Du Pratt, and told her that, what was 13:40:02</p> <p>16 going on, and I was going straight to that. And I 13:40:07</p> <p>17 don't know whether she told Larry about it or not, but 13:40:12</p> <p>18 I do know that, as soon as I returned to work -- and 13:40:16</p> <p>19 that was the day of the -- that training, so I missed 13:40:19</p> <p>20 that revolver training. When I came back to work, we 13:40:23</p> <p>21 were not in our department. I was in the revolver 13:40:26</p> <p>22 frame department. 13:40:31</p> <p>23 Larry yelled at me from 50 feet away to come 13:40:33</p> <p>24 over. He got within inches of my face, cursing, and 13:40:38</p> <p>25 he was so angry that I didn't make that training, that 13:40:45</p>	<p>1 A. Yes. 13:42:29</p> <p>2 Q. With Mr. Flatley, right? 13:42:30</p> <p>3 A. Yes. 13:42:31</p> <p>4 Q. Did you raise any other concerns with them 13:42:32</p> <p>5 during that meeting? 13:42:36</p> <p>6 MR. LEE: Objection to the form of the 13:42:38</p> <p>7 question, but you may answer. 13:42:39</p> <p>8 A. I -- I may have. Again, it's hard to 13:42:40</p> <p>9 differentiate which things I mentioned at which 13:42:44</p> <p>10 meeting. I know the early things, because they were 13:42:48</p> <p>11 the genesis. I know I did tell them some more issues 13:42:51</p> <p>12 that happened but can't really recall specifically 13:42:54</p> <p>13 what -- what was in that meeting, because there were 13:42:59</p> <p>14 others -- other meetings with Kathy and Ann, other 13:43:02</p> <p>15 incidents. 13:43:09</p> <p>16 Q. When you say "incidents," are you talking 13:43:09</p> <p>17 about incidents where Larry treated you in an abusive 13:43:11</p> <p>18 manner or incidents where you felt that Pioneer Tools 13:43:15</p> <p>19 was treated more favorably? 13:43:22</p> <p>20 A. Both. 13:43:24</p> <p>21 Q. And you don't recall -- you can't recall 13:43:32</p> <p>22 any specific issue that you raised or specific concern 13:43:35</p> <p>23 that you raised during this meeting about either HR 13:43:39</p> <p>24 issues or the Pioneer? 13:43:42</p> <p>25 A. Yes, the HR issue related to the 13:43:44</p>
119	121
<p>1 I told him, I -- didn't Linda tell you? I was at the 13:40:50</p> <p>2 ER. And he said, I don't give an F where you were, 13:40:57</p> <p>3 and just basically just ripped me to pieces. And I 13:41:04</p> <p>4 thought it was embarrassing to be out on the floor for 13:41:06</p> <p>5 him to be screaming like that. 13:41:09</p> <p>6 And so I went directly from there to HR and -- 13:41:11</p> <p>7 and told them that, A, my treatment or Larry's 13:41:15</p> <p>8 treatment of me had not improved, and, B, that there 13:41:23</p> <p>9 were a number of other things that I had witnessed 13:41:25</p> <p>10 that made me, rather than doubt what I had told them, 13:41:28</p> <p>11 but reinforced them. 13:41:34</p> <p>12 Q. And -- and did you meet with both Ms. Glica 13:41:38</p> <p>13 and Ms. Salvador at that point? 13:41:41</p> <p>14 A. In that meeting, once I had been passed to 13:41:43</p> <p>15 Ms. Salvador, I went directly to Ms. Salvador. But 13:41:47</p> <p>16 they were still in that trailer. So in the process of 13:41:51</p> <p>17 speaking with Ms. Salvador, Ms. Glica did join the 13:41:55</p> <p>18 meeting after it started. She rolled her chair over 13:42:02</p> <p>19 from the other cubicle and became the -- part of the 13:42:05</p> <p>20 end of that meeting. I don't think it was improper in 13:42:08</p> <p>21 any way, because she was my designated HR 13:42:12</p> <p>22 representative and Kathy was her supervisor. So it 13:42:18</p> <p>23 started with Kathy and ended up with Ann. 13:42:20</p> <p>24 Q. And then you relayed to them the incident 13:42:24</p> <p>25 that had happened earlier that day? 13:42:28</p>	<p>1 commendation that was given to my department for 13:43:51</p> <p>2 reducing or improving our quality. The first 13:43:54</p> <p>3 commendation that I was given, I'd just want to note, 13:44:02</p> <p>4 is at the same time that -- of the notes taken by 13:44:05</p> <p>5 Mr. Flatley where you said, you know, inferred that he 13:44:10</p> <p>6 was upset with me. He was giving me commendations at 13:44:15</p> <p>7 the same time. It's just his style to -- well, I 13:44:21</p> <p>8 digress. 13:44:25</p> <p>9 Anyhow, there's a second commendation we got 13:44:26</p> <p>10 that I went to Mr. Fontaine to have him sign the -- 13:44:30</p> <p>11 get his approval and -- and get him to sign the -- the 13:44:36</p> <p>12 thing, see if it was okay to do. And he said that, 13:44:40</p> <p>13 since Mr. Flatley was the -- even though Mr. Fontaine 13:44:45</p> <p>14 had signed the first one, he felt since it was 13:44:49</p> <p>15 Flatley's department that he wanted Flatley to sign 13:44:51</p> <p>16 it. 13:44:54</p> <p>17 So when I went to Flatley's department, there 13:44:54</p> <p>18 are a couple of emails that reference that Larry -- 13:44:58</p> <p>19 maybe emails or texts -- where I note that Larry 13:45:03</p> <p>20 doesn't seem too happy, and when I went to that 13:45:06</p> <p>21 meeting, he -- he was unhinged, don't you ever fucking 13:45:09</p> <p>22 do this again, blah, blah, blah. 13:45:15</p> <p>23 And so the gist of it was that Ann Glica or 13:45:21</p> <p>24 Glica had asked if they could put on the message 13:45:26</p> <p>25 board -- they had TVs throughout the plant -- she 13:45:30</p>



Baker, Earl Donald

August 14, 2020

32 (Pages 122 to 125)

	122		124		
1	wanted to put that on the TV board that this	13:45:33	1	that it was Dan who told me to come here and have you	13:48:34
2	department had just improved their quality by this	13:45:36	2	sign it.	13:48:37
3	much and -- and she wanted Larry's okay.	13:45:39	3	So, again, I don't know what his comment was,	13:48:37
4	So when I met with him, he said, don't you ever	13:45:43	4	but he said something that caused me to respond that,	13:48:43
5	F-ing do this again. He -- he didn't want to be a	13:45:47	5	well, it was Dan -- almost like Dan wasn't aware of	13:48:49
6	part of it. But also where do we stand on this, he	13:45:52	6	what was going on. I told him that Dan had -- but I	13:48:51
7	said, proceed with this, don't ever do it again, now	13:45:58	7	don't know his exact words.	13:48:55
8	get the F out of my office.	13:46:00	8	Q. And did you raise any other concerns or	13:48:57
9	So I was -- that bothered me, and I went	13:46:02	9	issues when you met with Ms. Glica and Ms. Salvador	13:49:00
10	straight to speak with Kathy, and Ann was part of that	13:46:07	10	the second time?	13:49:04
11	meeting instantly. So when I went there, both of them	13:46:13	11	A. Yes, I believe I did. There -- there were	13:49:05
12	met. And Ann was very upset. So much so that she	13:46:17	12	some ongoing things that had transpired, and I would	13:49:08
13	wanted to go down and get into it with Flatley. And I	13:46:22	13	have to look at like a time frame to know when I said	13:49:14
14	said, I'm not going to tell you what to do, but I	13:46:27	14	which thing, but there were issues that came up,	13:49:18
15	would ask that you wouldn't, because I felt like it	13:46:30	15	vending two tools for one, and just a lot of different	13:49:23
16	was just poking the bear, that he was a disagreeable	13:46:34	16	things that -- sending back the gun drills. And we	13:49:28
17	person. I've had disagreeable bosses before and many	13:46:40	17	didn't get into the thing about the gifts for vendors.	13:49:35
18	of my customers had personalities like that and you	13:46:45	18	I think we -- we discussed gifts that were given by	13:49:40
19	just learn to work with them.	13:46:48	19	Pioneer. I don't believe that the baseball tickets	13:49:44
20	And so I felt like just let it blow over and	13:46:49	20	came to my house yet until after I talked to	13:49:51
21	operate within the parameters they gave me and -- and	13:46:53	21	Mr. Cicero.	13:49:58
22	go on with it, but I did want them to -- to know that	13:46:55	22	But there were certainly things that happened	13:49:59
23	this is not the way you should treat an employee, and	13:46:59	23	on the floor where guys were telling me, Jim Valley,	13:50:02
24	I wanted it on record that this happened, and that I	13:47:03	24	one of the things I think I may have mentioned, Jim	13:50:08
25	still believed that it was being -- if -- I know	13:47:05	25	Valley had told me that he had a drill that was making	13:50:10

	123		125		
1	personalities enough to where, if I'm doing something	13:47:12	1	7,000 holes per part before it got dull, and that they	13:50:14
2	to offend somebody, I just don't go in that area, but	13:47:15	2	forced him to switch to a drill that Pioneer carried,	13:50:19
3	because this wasn't -- I felt that this anger was	13:47:18	3	and he was only getting 700 parts -- or 600 parts per	13:50:22
4	coming from an external force, not from personal	13:47:20	4	drill, and that that extrapolated into a huge	13:50:27
5	interactions with him, not just that we didn't get	13:47:23	5	investment on the company's part.	13:50:31
6	along type of things, because I know how to deal with	13:47:26	6	And so he told me he had -- had tried to	13:50:35
7	people interpersonally. It had to do with there was a	13:47:28	7	specify on the requisition only this vendor and they	13:50:40
8	background motivation that was making Flatley angry,	13:47:34	8	still got it from Pioneer. And then he wrote "only	13:50:45
9	and I believed that issue was the fact that I opposed	13:47:39	9	this vendor" and circled it, and he still got it from	13:50:48
10	favoritism to vendors.	13:47:43	10	Pioneer.	13:50:52
11	Q. And did Mr. -- when Mr. Flatley became	13:47:51	11	So he had expressed his feeling with me	13:50:53
12	upset and unhinged, as you describe it, did he say why	13:47:56	12	that there were some underhanded things, and I'm sure	13:51:00
13	he was upset about the commendation?	13:48:00	13	I would have mentioned that to him. And that happened	13:51:01
14	A. No, no.	13:48:02	14	shortly after EASTEC, so I'm sure that probably would	13:51:03
15	Q. Did he express that he was upset that you	13:48:04	15	have been included in our conversations.	13:51:07
16	had gone around his back and -- and spoken with	13:48:06	16	Q. Shortly after EASTEC?	13:51:09
17	Mr. Fontaine about it?	13:48:09	17	A. Yes, when I talked to Jim Valley, I think	13:51:10
18	A. I don't believe so, but I had -- I do	13:48:10	18	it was.	13:51:14
19	recall he did mention Fontaine in some aspect. I	13:48:15	19	Q. Right. And do you recall anything else	13:51:14
20	don't really recall what, but I was --	13:48:21	20	that you -- any other concerns or issues that you	13:51:16
21	Q. He mentioned what? I'm sorry.	13:48:23	21	raised with Ms. Salvador and Ms. Glica during the	13:51:18
22	A. He mentioned Fontaine in some regard.	13:48:25	22	second meeting?	13:51:22
23	Q. Okay.	13:48:28	23	A. There are things that happened around that	13:51:22
24	A. But -- but I don't remember the contents of	13:48:29	24	time, but, again, I'm not sure, you know, when I	13:51:30
25	the exact thing he said, but I do recall telling him	13:48:32	25	disclosed them.	13:51:33

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

33 (Pages 126 to 129)

126	128
<p>1 Q. And when you met with them the second time, 13:51:35</p> <p>2 did you provide any -- any documents to them? 13:51:38</p> <p>3 A. No. I -- I never took any documents to 13:51:40</p> <p>4 them. The only time documents became involved were 13:51:44</p> <p>5 when Mr. Suraci had asked me, do you have 13:51:47</p> <p>6 documentation, and he said, send me whatever you have. 13:51:54</p> <p>7 And so I didn't provide documents to anyone up to that 13:51:59</p> <p>8 point. 13:52:03</p> <p>9 Q. And did you identify the witnesses during 13:52:05</p> <p>10 your meeting with them? 13:52:07</p> <p>11 A. Yes, I would have mentioned Jim Valley. I 13:52:08</p> <p>12 trusted them enough to where, if somebody had told me 13:52:11</p> <p>13 something, you know, even somewhat, you know, just 13:52:15</p> <p>14 between the two of us, I trusted them and their 13:52:21</p> <p>15 professionalism enough that I would have hesitated to 13:52:24</p> <p>16 mention that Jim Valley or James Peel had told me that 13:52:27</p> <p>17 it was mandated that they buy reamers from Pioneer 13:52:32</p> <p>18 that didn't work as well at 330 apiece when Pacific 13:52:37</p> <p>19 had a tool that worked far better for 189. So that 13:52:43</p> <p>20 would have been probably something I had mentioned as 13:52:48</p> <p>21 well. 13:52:51</p> <p>22 Q. Did you ask them to investigate the 13:52:52</p> <p>23 concerns and issues that you've described during the 13:52:55</p> <p>24 second meeting? 13:52:57</p> <p>25 A. No. Again, I -- I never asked them to 13:52:58</p>	<p>1 Ms. Salvador had mentioned that she was looking into 13:54:28</p> <p>2 it. 13:54:31</p> <p>3 Q. And you don't -- but you don't know what 13:54:33</p> <p>4 she did to look into it, right? 13:54:35</p> <p>5 A. No, I don't. 13:54:37</p> <p>6 Q. And did they make any recommendations or 13:54:38</p> <p>7 suggestions to you about your relationship with 13:54:42</p> <p>8 Mr. Flatley at that point? 13:54:45</p> <p>9 A. I don't recall them ever making, like, 13:54:46</p> <p>10 suggestions from -- I never really related something, 13:54:57</p> <p>11 and I -- I imagine it would be true of anyone that I 13:55:02</p> <p>12 didn't really mention that, A, I had done this wrong 13:55:07</p> <p>13 and he did this. 13:55:12</p> <p>14 I gave things from my perspective, and I 13:55:13</p> <p>15 didn't -- I don't think I gave them any things that I 13:55:16</p> <p>16 did that, from their perspective, that were 13:55:21</p> <p>17 correctible. So they never offered me any advice as 13:55:24</p> <p>18 to maybe you should do this or should do that. 13:55:27</p> <p>19 The only -- the only suggestion they gave was, 13:55:31</p> <p>20 we think that you may -- should take these -- these 13:55:34</p> <p>21 things to Mr. Fontaine. So that was their only 13:55:39</p> <p>22 suggestion to me. 13:55:43</p> <p>23 Q. Did you at that point talk with 13:55:44</p> <p>24 Mr. Fontaine about your concerns? 13:55:47</p> <p>25 A. Not until February, early February, 13:55:48</p>
127	129
<p>1 investigate anything. I felt like, as part of a 13:53:01</p> <p>2 manager, there are things that go on above my head 13:53:06</p> <p>3 that it's easy to see bad things and say, well, I -- I 13:53:09</p> <p>4 think management owes me this or that and to come talk 13:53:13</p> <p>5 to me. 13:53:18</p> <p>6 I felt my part in it was to let them know what 13:53:19</p> <p>7 was going on, because I -- I operated from the 13:53:22</p> <p>8 assumption that they would do the proper thing with 13:53:26</p> <p>9 what I had, and they didn't owe it to me to come back 13:53:29</p> <p>10 and tell me their, you know, their progress or 13:53:33</p> <p>11 anything. I just -- they would check to see if things 13:53:37</p> <p>12 were still the same, and they would -- they didn't 13:53:40</p> <p>13 change, that I still saw a favoritism. 13:53:44</p> <p>14 Q. And do you know whether they under -- 13:53:48</p> <p>15 anyone in HR, anyone in the company at that point 13:53:51</p> <p>16 undertook an investigation of your concerns about 13:53:54</p> <p>17 Mr. Flatley or Pioneer Tool? 13:53:56</p> <p>18 A. I -- Kathy did mention in one of the 13:53:58</p> <p>19 meetings that we -- the first meeting, we'll have to 13:54:01</p> <p>20 see how we're going to handle this, and she did 13:54:07</p> <p>21 mention that she was going to talk to somebody above 13:54:10</p> <p>22 her to see how they were going to handle this. 13:54:13</p> <p>23 But in one of the meetings said, you know, that 13:54:15</p> <p>24 we're -- we're looking into it, but I never asked them 13:54:20</p> <p>25 to look into it, but I -- my impression is that 13:54:23</p>	<p>1 February 5th, I believe. 13:55:52</p> <p>2 Q. Okay. 13:55:54</p> <p>3 A. I set up a -- I set up a meeting with Kathy 13:55:54</p> <p>4 and told her that I felt like it was time to talk to 13:55:58</p> <p>5 Mr. Fontaine, because Larry openly verbally told me, 13:56:01</p> <p>6 you should just quit. And so I talked to Kathy. She 13:56:07</p> <p>7 set up a meeting. And it progressed from there. 13:56:13</p> <p>8 Q. Okay. And -- and do you know whether 13:56:18</p> <p>9 Ms. Salvador or Ms. Glica told anyone about your 13:56:23</p> <p>10 concerns about Mr. Flatley or Pioneer Tool? 13:56:28</p> <p>11 A. They provided no information on what 13:56:31</p> <p>12 investigation they were doing. 13:56:34</p> <p>13 Q. And at that point did you report your 13:56:36</p> <p>14 concerns about Mr. Flatley or Pioneer Tool to anyone 13:56:39</p> <p>15 else? 13:56:42</p> <p>16 A. There are a number of people that I had 13:56:43</p> <p>17 talked about -- about it, but not in a -- I'm going to 13:56:46</p> <p>18 say this -- not in the chain of command, not -- not 13:56:56</p> <p>19 somebody that was in a position higher than myself to 13:56:59</p> <p>20 be able to do it, to do something about it. 13:57:01</p> <p>21 Q. So you were talking with colleagues at your 13:57:03</p> <p>22 level and subordinates -- 13:57:06</p> <p>23 A. Yes. 13:57:08</p> <p>24 Q. -- below you; is that right? 13:57:08</p> <p>25 A. Yes, and many of them shared similar 13:57:09</p>

Baker, Earl Donald

August 14, 2020

34 (Pages 130 to 133)

130	132
<p>1 stories that they had either heard or witnessed 13:57:13</p> <p>2 themselves. Many of them said that there was -- this 13:57:18</p> <p>3 kind of stuff has been rumored quite a bit. And I 13:57:20</p> <p>4 feel that their culture at Smith &amp; Wesson was a 13:57:23</p> <p>5 pay-to-play. They didn't seem as alarmed by it as 13:57:29</p> <p>6 what I did, but they felt that it had gone on for a 13:57:32</p> <p>7 while. 13:57:36</p> <p>8 And I think that it was a pay-to-play society, 13:57:36</p> <p>9 that the vendors was an unspoken thing, like we expect 13:57:41</p> <p>10 you to do this, and -- and it was -- it was more 13:57:45</p> <p>11 commonplace for -- for the people who had been there 13:57:50</p> <p>12 longer. Since I came from the outside, I felt that 13:57:53</p> <p>13 was -- it was totally inappropriate. 13:57:55</p> <p>14 Q. Either at the time of your first meeting or 13:57:58</p> <p>15 your second meeting with Ms. Glica and Ms. Salvador, 13:58:02</p> <p>16 did you file or make any report with the hotline at 13:58:06</p> <p>17 Smith &amp; Wesson? 13:58:11</p> <p>18 A. No, I didn't, and there were reasons for 13:58:11</p> <p>19 that. 13:58:14</p> <p>20 Q. Did you ever contact the hotline about any 13:58:17</p> <p>21 of your concerns? 13:58:19</p> <p>22 A. No. And I -- I told Mr. Cicero why I had 13:58:20</p> <p>23 not. 13:58:24</p> <p>24 Q. And why was that? 13:58:24</p> <p>25 A. I had a brother-in-law who was once the 13:58:25</p>	<p>1 A. Actually to get this correct, you can go 14:00:08</p> <p>2 back and -- to what I said, that we had three meetings 14:00:12</p> <p>3 with them, one pertaining to the first meeting over 14:00:15</p> <p>4 the pay, the second was missing the class, the third 14:00:18</p> <p>5 was over the -- the commendation. And so the February 14:00:22</p> <p>6 would have been the fourth time. So -- and, yes, 14:00:30</p> <p>7 Kathy did call me and say that she had set up a 14:00:33</p> <p>8 meeting with Dan on the phone. 14:00:39</p> <p>9 Then I got either a -- I can't recall if it was 14:00:43</p> <p>10 an email or a call again saying that -- from Kathy 14:00:47</p> <p>11 Salvador -- saying that she was just asked not to be 14:00:54</p> <p>12 at the meeting, and she seemed upset by it, because 14:00:57</p> <p>13 she had been representing me in this matter and she 14:01:01</p> <p>14 seemed upset that at the last minute she was told not 14:01:05</p> <p>15 to attend. 14:01:08</p> <p>16 Q. Did she tell you anything else during that 14:01:10</p> <p>17 conversation? 14:01:12</p> <p>18 A. No. No, just that -- I could sense that it 14:01:12</p> <p>19 was a quandary to her as to why, but -- and that she 14:01:16</p> <p>20 maybe didn't feel it was right or -- she was holding 14:01:23</p> <p>21 back something. That's all I can say. 14:01:27</p> <p>22 Q. And did you have any further contact with 14:01:32</p> <p>23 Ms. Salvador about your concerns about Mr. Flatley or 14:01:34</p> <p>24 Pioneer after that phone call? 14:01:39</p> <p>25 A. We had talked to her somewhat, but Ed 14:01:41</p>
131	133
<p>1 vice president of -- at Rolls Royce. He told me of 13:58:32</p> <p>2 his dealings at GE where he actually told me that 13:58:39</p> <p>3 here's a place where you can report, you can go to the 13:58:45</p> <p>4 FBI, but -- and that they would give you money for, 13:58:47</p> <p>5 depending on how big of a deal it was. And he said 13:58:54</p> <p>6 they shut down their production for a number of weeks 13:58:57</p> <p>7 or months investigating. 13:59:00</p> <p>8 And I told Mr. Cicero, he asked me the same 13:59:03</p> <p>9 question you just did, and I told him that I didn't 13:59:07</p> <p>10 want to -- I wanted Smith &amp; Wesson to handle their 13:59:10</p> <p>11 problem, because I didn't want the company to be hurt. 13:59:13</p> <p>12 If we dealt -- we were in a bull market where we were 13:59:16</p> <p>13 doing \$63 million in sales a month, shutting us down 13:59:21</p> <p>14 for three or four months could come into billions of 13:59:24</p> <p>15 dollars -- or millions -- multiple millions, and I 13:59:28</p> <p>16 didn't want Smith &amp; Wesson to be hurt. I wasn't 13:59:31</p> <p>17 looking for anything I could get out of it. I just 13:59:34</p> <p>18 wanted this corrected so that it wasn't happening. 13:59:36</p> <p>19 Q. You mentioned that around February 5th you 13:59:42</p> <p>20 reached out to Kathy Salvador and she scheduled a 13:59:46</p> <p>21 meeting or a call with Dan Fontaine. Did you have any 13:59:50</p> <p>22 communications or interactions with Kathy Salvador or 13:59:53</p> <p>23 Ann Glica between the second meeting that you've 13:59:58</p> <p>24 described and when you reached out to Ms. Salvador 14:00:03</p> <p>25 around February 5th? 14:00:07</p>	<p>1 Suraci became the head -- the main point of contact 14:01:49</p> <p>2 with HR, but I did interact with her relative to a few 14:01:53</p> <p>3 meetings. 14:02:00</p> <p>4 Q. Relative to what? I'm sorry. 14:02:01</p> <p>5 A. Relative to a few meetings where Mr. Suraci 14:02:03</p> <p>6 asked her to be present. 14:02:09</p> <p>7 Q. Okay. 14:02:10</p> <p>8 A. So Suraci was the main contact, but there 14:02:11</p> <p>9 were a couple of times where he asked Ms. Salvador to 14:02:13</p> <p>10 sit in on the meeting. 14:02:16</p> <p>11 Q. Okay. And so it sounds like the next 14:02:17</p> <p>12 interaction involving HR was the meeting with 14:02:21</p> <p>13 Mr. Fontaine after you reached out to Kathy Salvador 14:02:25</p> <p>14 on February 5th; is that right? 14:02:29</p> <p>15 A. Yes. 14:02:31</p> <p>16 Q. And when did that meeting take place? 14:02:31</p> <p>17 A. I can't say. Just a few days after the bad 14:02:34</p> <p>18 review, and that was the first time I met Mr. Suraci. 14:02:39</p> <p>19 Q. Okay. And who was present at the meeting 14:02:43</p> <p>20 other than Mr. Fontaine, Mr. Suraci, and you, if 14:02:47</p> <p>21 anyone? 14:02:50</p> <p>22 A. Mr. Flatley. 14:02:50</p> <p>23 Q. Okay. And what happened during the 14:02:52</p> <p>24 meeting? 14:02:59</p> <p>25 A. We -- I felt that it was kind of -- we were 14:03:01</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

35 (Pages 134 to 137)

134	136
<p>1 going over the -- how we got there type of thing. We 14:03:11</p> <p>2 didn't really get into too much of the meat of it. I 14:03:16</p> <p>3 felt and expressed to Dan Fontaine that he's a busy 14:03:18</p> <p>4 man and that -- and that I understood that he didn't 14:03:24</p> <p>5 have a whole lot of time to develop or devote to it, 14:03:26</p> <p>6 but Larry was given -- took almost the entire time 14:03:29</p> <p>7 just railing on me, and I didn't get a chance to 14:03:34</p> <p>8 mention -- Ms. Glica and Ms. Salvador had told me -- I 14:03:39</p> <p>9 did just recall something -- the interaction right 14:03:46</p> <p>10 before the meeting, Ann Glica contacted me and said, 14:03:49</p> <p>11 we want you to write a rebuttal to the things that was 14:03:53</p> <p>12 in that review. 14:03:57</p> <p>13 So it was at her request I did so. I took it 14:03:58</p> <p>14 to that meeting. And Flatley talked the whole time. 14:04:01</p> <p>15 And a number of the things that he mentioned in the -- 14:04:05</p> <p>16 in that review were just factually wrong. They 14:04:09</p> <p>17 were -- they weren't -- they were basically lies. He 14:04:14</p> <p>18 said this didn't happen when I had proof in my hand 14:04:18</p> <p>19 that it did. He said that the Robo report hasn't been 14:04:21</p> <p>20 made. I carried a copy of the Robo report there 14:04:24</p> <p>21 and -- and mentioned that in Mr. Flatley's own notes 14:04:29</p> <p>22 that was completed in -- in December of '13. But even 14:04:32</p> <p>23 if you look at my first review where it was a good 14:04:41</p> <p>24 review, in the future goals, if you look in there, it 14:04:44</p> <p>25 says my review was -- that he wanted it completed by 14:04:47</p>	<p>1 discussions during that meeting about any of your 14:06:14</p> <p>2 concerns about Pioneer Tool? 14:06:16</p> <p>3 A. No. Well, as I was told by Ms. Salvador, 14:06:18</p> <p>4 to keep it on the HR issues because, as far as I was 14:06:26</p> <p>5 concerned, she was working on the -- the SOX part of 14:06:30</p> <p>6 my claims on a separate matter and because she didn't 14:06:36</p> <p>7 know who was involved. What if Mr. Fontaine was 14:06:40</p> <p>8 involved? Then I might be telling Mr. Fontaine 14:06:43</p> <p>9 something that she didn't want as part of her 14:06:49</p> <p>10 investigation. 14:06:52</p> <p>11 So we kept it based on the fact that 14:06:53</p> <p>12 Mr. Flatley's issues that he raised in that are 14:06:56</p> <p>13 absolute provable falsehoods, and that it wasn't -- I 14:06:59</p> <p>14 wasn't being treated fairly, and -- and I felt the 14:07:08</p> <p>15 other thing would take its own course. If they found 14:07:12</p> <p>16 Larry was not involved with it, so be it. If he was 14:07:18</p> <p>17 involved with it, let it be what it's going to be. 14:07:21</p> <p>18 But that wasn't my issue. I had taken it to 14:07:24</p> <p>19 management. It's now management's issue. 14:07:30</p> <p>20 Q. And you referred to what Kathy was working 14:07:32</p> <p>21 on as SOX issues? 14:07:36</p> <p>22 A. Yes. 14:07:38</p> <p>23 Q. Are you referring to Sarbanes-Oxley? 14:07:38</p> <p>24 A. Yes, sir -- yes, ma'am. 14:07:40</p> <p>25 Q. And did you or she call them SOX issues at 14:07:41</p>
135	137
<p>1 March of 2014. 14:04:51</p> <p>2 So I'm being written up in February of 2014 14:04:54</p> <p>3 saying it's not complete. A, it is complete, I got a 14:04:57</p> <p>4 copy of it, and, B, you didn't require it to be done 14:05:01</p> <p>5 until March. 14:05:04</p> <p>6 So, anyhow, those things came up. I -- they 14:05:06</p> <p>7 didn't really give me much audience, so I left there 14:05:09</p> <p>8 frustrated. So we set up another meeting. That day 14:05:13</p> <p>9 they said, let's quit for now and we'll have another 14:05:19</p> <p>10 meeting. 14:05:22</p> <p>11 Q. Okay. And when did that meeting take -- 14:05:22</p> <p>12 take place? 14:05:24</p> <p>13 A. The second meeting? 14:05:24</p> <p>14 Q. Yes, after your review. 14:05:26</p> <p>15 A. He said, we're going to give Ed a chance to 14:05:29</p> <p>16 talk to both of you separately and to use his skills 14:05:34</p> <p>17 as a mediator to kind of solidify the issues between 14:05:38</p> <p>18 the two of you and then we'll pick a time to 14:05:42</p> <p>19 reconvene. 14:05:46</p> <p>20 So he gave Suraci time to -- to speak with both 14:05:46</p> <p>21 of us separately and -- and then they called an 14:05:50</p> <p>22 impromptu meeting when Ed was out of the shop, and -- 14:05:54</p> <p>23 and so the next meeting Suraci was not even there. 14:05:59</p> <p>24 Q. Let me go back to the first meeting 14:06:07</p> <p>25 following up on your review. Were there any 14:06:10</p>	<p>1 that time? 14:07:48</p> <p>2 A. I did, because -- because of the LRN that 14:07:48</p> <p>3 we were asked to take was on whistleblowing. The 14:07:51</p> <p>4 first was on whistleblowing. The second one was on 14:07:54</p> <p>5 ethics. 14:07:57</p> <p>6 So the first was how you would relate to, if 14:07:59</p> <p>7 you saw something that was improper. The second one, 14:08:03</p> <p>8 on ethics, related to how you interpersonally looked 14:08:06</p> <p>9 at issues where you're offered something that's -- no 14:08:10</p> <p>10 one else might know about but you had to have -- be 14:08:15</p> <p>11 ethical in how you dealt with it. 14:08:18</p> <p>12 So because we had that LRN, absolutely, we 14:08:20</p> <p>13 talked about the fact that -- that it was -- we had -- 14:08:23</p> <p>14 I had learned in SOX, XYZ, and that's why I'm bringing 14:08:29</p> <p>15 it to you. 14:08:34</p> <p>16 Q. Okay. And -- and you -- and you recall 14:08:35</p> <p>17 specifically saying to Kathy Salvador and/or Ann Glica 14:08:37</p> <p>18 that you had concerns under SOX, S-O-X? 14:08:42</p> <p>19 A. Yes. Yes, absolutely. 14:08:47</p> <p>20 Q. And as you sat there in the meeting with 14:08:48</p> <p>21 Mr. Flatley after your February evaluation, did you 14:08:51</p> <p>22 have any reason to believe that he knew that you had 14:08:56</p> <p>23 raised concerns with HR about Pioneer and his 14:08:59</p> <p>24 relationship with Pioneer? 14:09:03</p> <p>25 A. And what -- 14:09:05</p>

Baker, Earl Donald

August 14, 2020

36 (Pages 138 to 141)

<p style="text-align: right;">138</p> <p>1 MR. LEE: Objection to the -- objection to 14:09:05</p> <p>2 the form of the question, but, yeah, I wasn't sure of 14:09:06</p> <p>3 the timing either. 14:09:11</p> <p>4 <b>A. Right.</b> 14:09:13</p> <p>5 Q. So you said there were -- we were talking 14:09:13</p> <p>6 about the first meeting after your evaluation in 14:09:16</p> <p>7 February of 2014. As you were sitting -- sitting in 14:09:19</p> <p>8 that meeting with Mr. Fontaine and Mr. Suraci, did you 14:09:24</p> <p>9 have any reason to believe that Larry Flatley was 14:09:27</p> <p>10 aware of your concerns about his relationship with 14:09:30</p> <p>11 Pioneer? 14:09:33</p> <p>12 MR. LEE: Objection to the form of the 14:09:36</p> <p>13 question, calls for speculation, but you may answer, 14:09:37</p> <p>14 if you can. 14:09:41</p> <p>15 <b>A. There are times when you are more 14:09:46</b></p> <p>16 analytical and looking at it from a 2,000-foot view, 14:09:52</p> <p>17 and other times when it's right in your face and 14:09:59</p> <p>18 you're looking at how it relates to you personally. 14:10:02</p> <p>19 I don't know at that time that I was looking at 14:10:06</p> <p>20 it more of like when someone punches you in the nose, 14:10:09</p> <p>21 you're not thinking about how -- what drew them to 14:10:14</p> <p>22 this point, what kind of upbringing did he have. I 14:10:18</p> <p>23 was reacting to the actual injustice in the way I was 14:10:23</p> <p>24 being treated and the falsehoods that were in that 14:10:30</p> <p>25 thing, so I wasn't thinking as much about the big 14:10:33</p>	<p style="text-align: right;">140</p> <p>1 Mr. -- Mr. Fontaine and Mr. Flatley were there, 14:12:19</p> <p>2 correct? 14:12:24</p> <p>3 <b>A. Yes.</b> 14:12:24</p> <p>4 Q. And Mr. Suraci was not there; is that 14:12:25</p> <p>5 right? 14:12:32</p> <p>6 <b>A. That's correct.</b> 14:12:32</p> <p>7 Q. And was anybody else there? 14:12:33</p> <p>8 <b>A. No.</b> 14:12:35</p> <p>9 Q. Okay. And where did that meeting take 14:12:36</p> <p>10 place? 14:12:39</p> <p>11 <b>A. In Dan Fontaine's office.</b> 14:12:40</p> <p>12 Q. And how long did it last? 14:12:42</p> <p>13 <b>A. I felt like it was a fairly short meeting.</b> 14:12:43</p> <p>14 <b>Dan had mentioned his calendar being full, so it 14:12:48</b></p> <p>15 <b>was -- it was a short meeting.</b> 14:12:51</p> <p>16 Q. What happened during the meeting? 14:12:52</p> <p>17 <b>A. It was the first time I really had a -- an 14:12:55</b></p> <p>18 opportunity to express my feelings about the review 14:12:59</p> <p>19 and the other falsehoods that were in it. And Dan 14:13:03</p> <p>20 Fontaine's response was he was getting a little miffed 14:13:08</p> <p>21 that he was being dragged into this, you know, slap 14:13:15</p> <p>22 fight. 14:13:18</p> <p>23 <b>So he took the review and said, this is out of 14:13:18</b></p> <p>24 cycle, it isn't anything, it doesn't -- and I -- and 14:13:22</p> <p>25 he slapped it upside down on his desk. I told him 14:13:26</p>
<p style="text-align: right;">139</p> <p>1 picture. 14:10:36</p> <p>2 Should I have been? Possibly. But at that 14:10:37</p> <p>3 time I was just interacting with the fact that I had 14:10:40</p> <p>4 just been punched in the nose and told I should just 14:10:43</p> <p>5 quit. I gave up a lot to go there, and I just didn't 14:10:46</p> <p>6 like to be dismissed in that way. And I did believe 14:10:50</p> <p>7 it was for the purpose of SOX, but I didn't even 14:10:53</p> <p>8 ponder whether or not at that point Flatley was aware 14:10:58</p> <p>9 of it or wasn't, but I found out shortly thereafter. 14:11:01</p> <p>10 Q. And what -- what did you find out shortly 14:11:07</p> <p>11 thereafter? 14:11:10</p> <p>12 <b>A. My office was broken into and my journal 14:11:11</b></p> <p>13 was stolen, my briefcase was gone through, and I have 14:11:18</p> <p>14 reports that it was Flatley that did so. I called 14:11:26</p> <p>15 Mr. Suraci right away and even called Mr. -- at his 14:11:33</p> <p>16 request, I called Mr. Cicero on a Saturday. So I 14:11:38</p> <p>17 talked to them both on Saturday when I found out. 14:11:41</p> <p>18 I left on Friday, and I had to go in to work on 14:11:44</p> <p>19 Saturday to take care of an issue, and when I got 14:11:47</p> <p>20 there I found my office ransacked, and I called both 14:11:50</p> <p>21 of them to let them know. And at that point I felt 14:11:54</p> <p>22 certain that Mr. Flatley had been told and that it was 14:11:58</p> <p>23 now open war. 14:12:04</p> <p>24 Q. Let's go back to the second meeting after 14:12:06</p> <p>25 your February 2014 evaluation. You indicated that 14:12:10</p>	<p style="text-align: right;">141</p> <p>1 that Mr. Fontaine or Mr. Flatley had taken the first 14:13:30</p> <p>2 meeting saying his side, I hadn't really explained, so 14:13:33</p> <p>3 I started going into some of the factual errors. 14:13:37</p> <p>4 He said, listen, I'm going to tell you -- cut 14:13:41</p> <p>5 you off right there and say, for our intents and 14:13:43</p> <p>6 purposes, this thing does not exist, and he slapped 14:13:48</p> <p>7 his hand on it. It was turned upside down on his 14:13:50</p> <p>8 desk. He said, this thing does not exist. It -- it 14:13:54</p> <p>9 never happened. And I reported that to Ed. 14:13:56</p> <p>10 Q. You reported it to who? 14:14:05</p> <p>11 <b>A. Ed Suraci. I don't know if it's Suraci or 14:14:07</b></p> <p>12 Suraci. I always call him Suraci, but I think that's 14:14:11</p> <p>13 it. 14:14:15</p> <p>14 Q. And you had -- you had indicated that HR 14:14:15</p> <p>15 had suggested that you draft a rebuttal -- 14:14:17</p> <p>16 <b>A. Yes.</b> 14:14:21</p> <p>17 Q. -- to the evaluation in February. Did you 14:14:21</p> <p>18 provide that to anyone prior to either of these 14:14:25</p> <p>19 meetings? 14:14:28</p> <p>20 <b>A. Yes. I --</b> 14:14:29</p> <p>21 Q. Who did you provide them to? 14:14:30</p> <p>22 <b>A. Mr. Fontaine.</b> 14:14:31</p> <p>23 Q. And you provided it to Mr. Flatley as well? 14:14:34</p> <p>24 <b>A. I don't recall. I -- I just honestly don't 14:14:37</b></p> <p>25 recall whether I did him or not. I know Ann got a 14:14:43</p>



Baker, Earl Donald

August 14, 2020

37 (Pages 142 to 145)

<p style="text-align: right;">142</p> <p>1 <b>copy.</b> 14:14:46</p> <p>2 Q. Ann Glica? 14:14:47</p> <p>3 <b>A. Yes. And I know that -- I think, my</b> 14:14:48</p> <p>4 <b>recollection is that I gave one to Mr. Fontaine prior</b> 14:14:53</p> <p>5 <b>to the meeting, but I know that he certainly had one</b> 14:14:56</p> <p>6 <b>in the meeting because I think I would have taken a</b> 14:15:00</p> <p>7 <b>copy with me.</b> 14:15:02</p> <p>8 Q. Right. So let's go to Exhibit 6 in the 14:15:03</p> <p>9 binder of exhibits. 14:15:08</p> <p>10 (Exhibit 6 previously marked 14:15:11</p> <p>11 for identification and referenced</p> <p>12 herein: Email dated November 7th,</p> <p>13 2013) 14:15:11</p> <p>14 Q. And this is an email dated November 7th, 14:15:11</p> <p>15 2013, correct? 14:15:21</p> <p>16 MR. LEE: Did you find it, Earl? 14:15:39</p> <p>17 <b>A. The one I'm looking at says -- under 6 is</b> 14:15:41</p> <p>18 <b>November 7th.</b> 14:15:43</p> <p>19 Q. I may have misspoken. I'm sorry. Is 14:15:46</p> <p>20 Exhibit 6 a November 7, 2013 email, email exchange, 14:15:48</p> <p>21 between you, Kathy Salvador, and Ann Glica? 14:15:54</p> <p>22 <b>A. Yes.</b> 14:15:58</p> <p>23 Q. And let's start at the bottom. That email 14:15:59</p> <p>24 is from November 5th, correct? 14:16:03</p> <p>25 <b>A. Yes.</b> 14:16:05</p>	<p style="text-align: right;">144</p> <p>1 Q. And in the next paragraph, you say, I 14:17:19</p> <p>2 think, "I see things as being bleak and must pursue 14:17:22</p> <p>3 options that give me some level of protection." What 14:17:26</p> <p>4 were you referring to about protection? 14:17:29</p> <p>5 <b>A. I was contemplating going to the -- the --</b> 14:17:31</p> <p>6 <b>to that submission line, because whether they were</b> 14:17:38</p> <p>7 <b>working on it or not, I was content with they didn't</b> 14:17:41</p> <p>8 <b>have to -- they don't owe it to me to keep me informed</b> 14:17:44</p> <p>9 <b>of what they're finding out, but yet nothing is</b> 14:17:49</p> <p>10 <b>happening and I'm still having some increasingly</b> 14:17:52</p> <p>11 <b>negative interactions with Flatley and whatever it is</b> 14:17:57</p> <p>12 <b>they're doing isn't enough.</b> 14:18:04</p> <p>13 <b>So I had thought about going -- getting, A,</b> 14:18:05</p> <p>14 <b>possibly legal advice, and, B, possibly going to --</b> 14:18:09</p> <p>15 <b>there are three things that were option -- legal</b> 14:18:16</p> <p>16 <b>advice, go to the -- that health line, or actually go</b> 14:18:19</p> <p>17 <b>to the FBI. That had been suggested at some point.</b> 14:18:23</p> <p>18 Q. And -- but you didn't take any of those 14:18:28</p> <p>19 options at that point, right? 14:18:30</p> <p>20 <b>A. No. I just said I was considering those as</b> 14:18:31</p> <p>21 <b>some actions that may give me a better level of</b> 14:18:35</p> <p>22 <b>protection because I gave up so much to go to</b> 14:18:40</p> <p>23 <b>Smith &amp; Wesson and I didn't -- I didn't want to lose</b> 14:18:43</p> <p>24 <b>it because I -- I ran into a guy who wasn't ethical in</b> 14:18:46</p> <p>25 <b>what he was doing.</b> 14:18:51</p>
<p style="text-align: right;">143</p> <p>1 Q. And you talk in the -- in the first line 14:16:05</p> <p>2 about the option that you recommended. That was 14:16:11</p> <p>3 talking with Mr. Fontaine, correct? 14:16:14</p> <p>4 <b>A. Yes.</b> 14:16:15</p> <p>5 Q. And you said, "After having additional 14:16:16</p> <p>6 meetings since we spoke, I believe the situation 14:16:19</p> <p>7 remains equally antagonistic." Which meeting are you 14:16:23</p> <p>8 referring to in that line? 14:16:27</p> <p>9 <b>A. I think they were talking about how my</b> 14:16:28</p> <p>10 <b>meetings went with Mr. Flatley in his office so</b> 14:16:33</p> <p>11 <b>that -- there was a meeting where he gave me the false</b> 14:16:38</p> <p>12 <b>review, and then I've had one meeting with Larry since</b> 14:16:40</p> <p>13 <b>we last spoke, was what I referred to.</b> 14:16:46</p> <p>14 Q. You said that the false review -- at this 14:16:50</p> <p>15 point, November 2013, you had not received the 14:16:54</p> <p>16 February 2014 evaluation, right? 14:16:56</p> <p>17 <b>A. No. Well, then I'm mistaken. I just</b> 14:16:58</p> <p>18 <b>didn't pay attention to the time frame.</b> 14:17:05</p> <p>19 Q. I -- I've moved around in the timeline with 14:17:07</p> <p>20 you. 14:17:09</p> <p>21 <b>A. Okay.</b> 14:17:09</p> <p>22 Q. Do you recall what meeting you're 14:17:11</p> <p>23 referencing there? 14:17:12</p> <p>24 <b>A. It would have been just a meeting with</b> 14:17:13</p> <p>25 <b>Larry since I talked to them.</b> 14:17:17</p>	<p style="text-align: right;">145</p> <p>1 Q. Now in Kathy Salvador's response she again 14:18:54</p> <p>2 makes the recommendation that you engage Dan Fontaine, 14:18:58</p> <p>3 correct? 14:19:03</p> <p>4 <b>A. Yes.</b> 14:19:03</p> <p>5 Q. And she said that he might be able to 14:19:05</p> <p>6 recommend -- "seeing what, if anything, he might be 14:19:07</p> <p>7 able to recommend in order to help you achieve your 14:19:10</p> <p>8 department goals and to help smooth the relationship 14:19:14</p> <p>9 between you and Larry," right? 14:19:15</p> <p>10 <b>A. Yes.</b> 14:19:17</p> <p>11 Q. Was that -- was that a yes? I'm sorry. 14:19:18</p> <p>12 <b>A. Yes. Yes.</b> 14:19:21</p> <p>13 Q. And then your response is above that, 14:19:22</p> <p>14 right? 14:19:32</p> <p>15 <b>A. I don't know if anything -- I don't know if</b> 14:19:32</p> <p>16 <b>there was anything that occurred in between that. All</b> 14:19:37</p> <p>17 <b>I know is it's closely on the same day.</b> 14:19:40</p> <p>18 Q. And do you know whether you spoke to 14:19:45</p> <p>19 Mr. Fontaine at that point? 14:19:47</p> <p>20 MR. LEE: Objection to form of the 14:19:49</p> <p>21 question. About anything or about this or about this 14:19:50</p> <p>22 recommendation? 14:19:55</p> <p>23 Q. Let me -- let me clarify the question. 14:19:56</p> <p>24 They had recommended that you engage Dan Fontaine. 14:20:00</p> <p>25 Did you at that point engage him to talk about your 14:20:04</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

38 (Pages 146 to 149)

<p style="text-align: right;">146</p> <p>1 working relationship with Mr. Flatley? 14:20:08</p> <p>2 <b>A. I did not.</b> 14:20:10</p> <p>3 Q. And prior to your evaluation of February 14:20:11</p> <p>4 2014, did you meet with or speak with Anne Bruce? 14:20:25</p> <p>5 <b>A. No. No. Not -- well, I mean, we -- we had</b> 14:20:29</p> <p>6 <b>group meetings.</b> 14:20:34</p> <p>7 Q. But you did not talk with her individually 14:20:36</p> <p>8 about any of your concerns about Larry Flatley or 14:20:38</p> <p>9 Pioneer, correct? 14:20:41</p> <p>10 <b>A. No.</b> 14:20:42</p> <p>11 Q. Let's go to Exhibit 7. 14:20:45</p> <p>12 (Exhibit 7 previously marked 14:20:47</p> <p>13 for identification and referenced</p> <p>14 herein: February 2014 Performance</p> <p>15 Evaluation) 14:20:48</p> <p>16 Q. We talked about your February 2014 14:20:48</p> <p>17 Performance Evaluation. Is Exhibit 7 a copy of that 14:20:53</p> <p>18 evaluation? 14:20:57</p> <p>19 <b>A. It is one of the copies.</b> 14:20:58</p> <p>20 Q. Okay. 14:21:01</p> <p>21 <b>A. There are noted ones -- there are different</b> 14:21:01</p> <p>22 <b>ones out there.</b> 14:21:06</p> <p>23 Q. So this is one piece of the evaluation that 14:21:07</p> <p>24 you received around February 7th, right? 14:21:09</p> <p>25 <b>A. I actually received it on February 6th, and</b> 14:21:13</p>	<p style="text-align: right;">148</p> <p>1 <b>Response</b></p> <p>2 <b>SW0000112 - SW0000114)</b> 14:22:14</p> <p>3 MR. LEE: Well, hold on. I have three 14:22:14</p> <p>4 pages of Exhibit 9; that's -- is that correct? 14:22:16</p> <p>5 MS. BERTRAM: The version that I have has 14:22:20</p> <p>6 the first two pages of Exhibit 9 under the 8 tab and 14:22:23</p> <p>7 one page of Exhibit 9 under the 9 tab. So hopefully 14:22:27</p> <p>8 both of yours are correct. 14:22:31</p> <p>9 MR. LEE: Can we just make -- can we just 14:22:34</p> <p>10 make sure, are you talking about SW 112, SW 113, and 14:22:35</p> <p>11 SW 114 in the Bates number? 14:22:40</p> <p>12 MS. BERTRAM: That is correct. 14:22:43</p> <p>13 MR. LEE: Okay. That's what we have as 14:22:44</p> <p>14 Exhibit 9. 14:22:45</p> <p>15 MS. BERTRAM: Okay. 14:22:46</p> <p>16 Q. Mr. Baker, is Exhibit 9 the rebuttal that 14:22:47</p> <p>17 you drafted at HR's request? 14:22:49</p> <p>18 <b>A. Yes, part of it. There was two portions to</b> 14:22:52</p> <p>19 <b>the rebuttal. One was to the individual markings</b> 14:22:56</p> <p>20 <b>within the boxes that you showed me on that prior</b> 14:22:59</p> <p>21 <b>exhibit, and then this is to rebut the -- the addendum</b> 14:23:04</p> <p>22 <b>thing that he -- that Mr. Flatley attached where it</b> 14:23:10</p> <p>23 <b>says "Earl Baker Results." So I had one page for</b> 14:23:13</p> <p>24 <b>each. So my Exhibit 9 rebutted Flatley's, what he</b> 14:23:19</p> <p>25 <b>wrote in Exhibit 8.</b> 14:23:23</p>
<p style="text-align: right;">147</p> <p>1 <b>then there are some copies dated the 5th, some copies</b> 14:21:18</p> <p>2 <b>dated the 7th, but this wouldn't have been the one I</b> 14:21:22</p> <p>3 <b>accepted on the 6th because it's dated the 7th. So</b> 14:21:25</p> <p>4 <b>this is a subsequent copy after the fact.</b> 14:21:31</p> <p>5 Q. Let's go to Exhibit 8. And it's called 14:21:34</p> <p>6 "Earl Baker Result - February 7th, 2014," right? 14:21:39</p> <p>7 (Exhibit 8 previously marked</p> <p>8 for identification and referenced</p> <p>9 herein: Earl Baker Result 2/7/14</p> <p>10 Baker0000110) 14:21:44</p> <p>11 <b>A. Yes.</b> 14:21:44</p> <p>12 Q. And this is one of the other pieces of the 14:21:44</p> <p>13 evaluation that you received from Mr. Flatley at that 14:21:45</p> <p>14 time? 14:21:50</p> <p>15 <b>A. Yes.</b> 14:21:50</p> <p>16 Q. And go to the next page, which is actually 14:21:51</p> <p>17 Exhibit 9, but it says, "Earl Baker Result - February 14:21:54</p> <p>18 7th, 2014, Response." Is this the rebuttal that you 14:22:00</p> <p>19 drafted? And I note that it goes actually onto a 14:22:04</p> <p>20 single page that's Exhibit 9. Apparently Exhibit 9 14:22:08</p> <p>21 tab is a little bit off. 14:22:12</p> <p>22 <b>A. Okay.</b> 14:22:13</p> <p>23 (Exhibit 9 previously marked</p> <p>24 for identification and referenced</p> <p>25 herein: Earl Baker Result 2/7/14</p>	<p style="text-align: right;">149</p> <p>1 Q. Okay. And your rating in the evaluation, 14:23:25</p> <p>2 the overall performance rating, was "does not meet 14:23:50</p> <p>3 expectations," correct? 14:23:54</p> <p>4 <b>A. Yes.</b> 14:23:55</p> <p>5 Q. And you were given 60 days to improve your 14:23:55</p> <p>6 performance, right? 14:23:58</p> <p>7 <b>A. Yes.</b> 14:23:58</p> <p>8 Q. And I know that Mr. Flatley signed the 14:23:59</p> <p>9 review. Do you know whether anybody else provided -- 14:24:03</p> <p>10 any other manager provided input for the review, for 14:24:06</p> <p>11 the performance improvement plan? 14:24:10</p> <p>12 <b>A. I wasn't made aware of it.</b> 14:24:14</p> <p>13 Q. And you received the evaluation in person; 14:24:17</p> <p>14 is that right? 14:24:21</p> <p>15 <b>A. And -- yeah.</b> 14:24:21</p> <p>16 Q. And was anybody present for that discussion 14:24:28</p> <p>17 other than you and Mr. Flatley? 14:24:30</p> <p>18 <b>A. No, but I -- I know that Linda du Pratt was</b> 14:24:32</p> <p>19 <b>in the outer office. You had to go through</b> 14:24:38</p> <p>20 <b>Ms. du Pratt's office to go into Flatley's office, and</b> 14:24:43</p> <p>21 <b>I think that she was aware of what transpired because</b> 14:24:49</p> <p>22 <b>she -- she kind of gave me a look when I walked up.</b> 14:24:54</p> <p>23 Q. Do you know what, if anything, she was able 14:24:59</p> <p>24 to hear on the other side of the door? 14:25:01</p> <p>25 <b>A. No. Well, there was a little bit of -- I</b> 14:25:03</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

39 (Pages 150 to 153)

150	152
<p>1 don't believe I raised my voice at all, but 14:25:08</p> <p>2 Mr. Flatley, what he said, you're not -- not going to 14:25:11</p> <p>3 want to do this shit, you're just going to want to 14:25:14</p> <p>4 quit, and I think she may have heard that part. 14:25:17</p> <p>5 Q. And do you recall anything else that 14:25:26</p> <p>6 Mr. Flatley said to you during that meeting? 14:25:28</p> <p>7 A. Yeah. He had set up a group of meetings, 14:25:29</p> <p>8 and he said, I don't know if you can even attend this 14:25:35</p> <p>9 one, it takes place tomorrow in Boston, but -- and 14:25:37</p> <p>10 then there were some duplicates where they had the 14:25:40</p> <p>11 same class with a different heading, so he had written 14:25:43</p> <p>12 down two identical classes, and then I left the 14:25:46</p> <p>13 office. I was kind of quiet. And I went to my office 14:25:52</p> <p>14 and got into the seminar in Boston. So the next day I 14:25:59</p> <p>15 was off to Boston. 14:26:03</p> <p>16 Q. And do you recall anything else he said to 14:26:12</p> <p>17 you during that meeting? 14:26:14</p> <p>18 A. We -- as we went over those things, he 14:26:15</p> <p>19 was -- he was talking, but I was pretty angry and was 14:26:25</p> <p>20 just bristling. It was pretty much his floor. He was 14:26:30</p> <p>21 giving the review. I did not sign it. And that was 14:26:35</p> <p>22 pretty much it. A pretty grim day. 14:26:46</p> <p>23 Q. Now going back to Exhibit 9, which is your 14:26:48</p> <p>24 rebuttal or one of your rebuttal documents, was 14:26:54</p> <p>25 that -- do you view that as a complete response to the 14:27:03</p>	<p>1 good representation of what some of the errors in his 14:28:27</p> <p>2 judgment or in the things that he wrote, and it really 14:28:35</p> <p>3 wasn't judgment because he didn't believe the things 14:28:40</p> <p>4 he wrote anyway. He knew we were literally checking 14:28:42</p> <p>5 the Robo report every day, every day, yet in that 14:28:47</p> <p>6 report he said it had never been completed. 14:28:49</p> <p>7 When I took a copy of that report to show my 14:28:52</p> <p>8 superiors that there was an error, they refused to 14:28:56</p> <p>9 even look at it. They said, you could have printed 14:29:00</p> <p>10 that off with a word processor. 14:29:03</p> <p>11 So had anyone wanted to look at the things that 14:29:05</p> <p>12 Mr. Flatley said in that thing and investigated at the 14:29:07</p> <p>13 time when I had those facts at my fingertip, we could 14:29:11</p> <p>14 have put this to bed in five minutes, in five minutes, 14:29:16</p> <p>15 but Mr. Flatley was permitted to put this farce out 14:29:19</p> <p>16 there. And then when you start getting to the facts, 14:29:24</p> <p>17 Mr. Fontaine says it doesn't exist, it never happened. 14:29:27</p> <p>18 And then only to sign this thing later in July and 14:29:32</p> <p>19 affirm it and put it in my permanent record. 14:29:36</p> <p>20 So the things they did clearly violated HR 14:29:39</p> <p>21 policy, company policy. They basically turned the 14:29:44</p> <p>22 whole system on its head. They allowed one individual 14:29:49</p> <p>23 who was acting out in an improper way target and 14:29:52</p> <p>24 attack me when my -- my department at this time was 14:29:57</p> <p>25 more than double -- producing more than double of what 14:30:02</p>
151	153
<p>1 concerns that you have or -- strike that. 14:27:06</p> <p>2 Do you agree this as a complete response to the 14:27:09</p> <p>3 issues raised in the evaluation? 14:27:11</p> <p>4 MR. LEE: Objection to the -- objection to 14:27:14</p> <p>5 the form of the question, but you may answer. 14:27:16</p> <p>6 A. I don't -- it's like, I'm sure you -- you 14:27:19</p> <p>7 run into it in your business. You address the issues 14:27:24</p> <p>8 at hand, but I don't complete -- I don't view that as 14:27:27</p> <p>9 a complete, like I gave every answer possible to the 14:27:31</p> <p>10 thing. 14:27:37</p> <p>11 I just basically said, you know, pointed out 14:27:37</p> <p>12 some of the -- the factual errors in what he said, and 14:27:40</p> <p>13 did I do so in a perfect manner, leaving no stone 14:27:47</p> <p>14 unturned, I wouldn't say so, there might be some 14:27:50</p> <p>15 things that I add to it today, but, again, I thought 14:27:54</p> <p>16 it was a good representation to show that -- that the 14:27:57</p> <p>17 facts given in his review were fraudulent, he knew 14:28:01</p> <p>18 them not to be true, and he -- yet he said them anyway 14:28:05</p> <p>19 and ... 14:28:11</p> <p>20 Q. And was there anything important that you 14:28:11</p> <p>21 left out of the rebuttal? 14:28:13</p> <p>22 MR. LEE: Objection to the form of the 14:28:15</p> <p>23 question, but you may answer. 14:28:16</p> <p>24 A. Again, if I went over it today, there might 14:28:19</p> <p>25 be a few things I would add, but I felt this was a 14:28:22</p>	<p>1 any department or that department had ever done so in 14:30:05</p> <p>2 the history of the company. 14:30:09</p> <p>3 So my -- there was no question about the 14:30:12</p> <p>4 performance of my department or me. This is 14:30:14</p> <p>5 something, a narrative that they have placed after the 14:30:19</p> <p>6 fact. 14:30:21</p> <p>7 Q. Would you agree that the rebuttal only 14:30:24</p> <p>8 addresses your HR concerns? 14:30:26</p> <p>9 A. Absolutely. 14:30:28</p> <p>10 Q. It did not try to address any of the 14:30:30</p> <p>11 concerns that you had raised about Pioneer and -- and 14:30:34</p> <p>12 Mr. Flatley's relationship with it, correct? 14:30:37</p> <p>13 A. Yes. I will say that at the time of this 14:30:40</p> <p>14 writing I was asked to write this by Ms. Glica. And I 14:30:44</p> <p>15 had not met Mr. Suraci yet at this point. So my only 14:30:49</p> <p>16 point of contact that I've made my SOX claims to is 14:30:54</p> <p>17 Ms. Salvador. She had asked me not to mention any of 14:30:59</p> <p>18 the SOX-related claims because we don't know who's 14:31:04</p> <p>19 involved and we may have to find out how we're going 14:31:07</p> <p>20 to investigate this or how we're going to handle this, 14:31:10</p> <p>21 is the words she used. 14:31:12</p> <p>22 So I did what I was told to do. Had I put 14:31:13</p> <p>23 SOX-related things in there, I would have been deemed 14:31:18</p> <p>24 as being inappropriate and not listening to the advice 14:31:21</p> <p>25 of the person that I actually made my submissions to. 14:31:26</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

40 (Pages 154 to 157)

154	156
<p>1 So I left it in her hands and I did exactly as 14:31:30</p> <p>2 she said. So I kept it only regarding the way I was 14:31:34</p> <p>3 treated, and that's what she told me to take to 14:31:38</p> <p>4 Mr. Fontaine. So I did as I was told. 14:31:42</p> <p>5 Q. And the HR issues that are raised in your 14:31:45</p> <p>6 rebuttal, do you have any knowledge of what the 14:31:49</p> <p>7 company did to look into those concerns? 14:31:51</p> <p>8 A. No, they didn't -- they didn't keep me 14:31:55</p> <p>9 apprised. 14:31:58</p> <p>10 Q. In your discussions about your job and your 14:32:00</p> <p>11 job performance, did Mr. Flatley or Mr. Fontaine raise 14:32:09</p> <p>12 any concerns about you conducting safety and 5-S 14:32:15</p> <p>13 audits? 14:32:21</p> <p>14 A. When they were at the second meeting where 14:32:22</p> <p>15 Mr. Suraci was not -- not there, Mr. Flatley -- the 14:32:25</p> <p>16 meeting ended up with Mr. Flatley mentioning 14:32:32</p> <p>17 discrepancies on the pitch board. 14:32:36</p> <p>18 So we went directly from Mr. Fontaine's office 14:32:38</p> <p>19 to the pitch board, and that was in a whole other 14:32:42</p> <p>20 plant. So we all walked over. Mr. Fontaine, we went 14:32:48</p> <p>21 through the whole -- whole board. Mr. Fontaine said I 14:32:55</p> <p>22 was out of date on my 5-S and safety audits. 14:32:58</p> <p>23 And I want to correct the record that some of 14:33:03</p> <p>24 my writings, I was incorrect in saying that I was ten 14:33:05</p> <p>25 days late. I thought I was supposed to be doing it 14:33:08</p>	<p>1 you to Mr. Fontaine; is that right? 14:34:26</p> <p>2 A. Yes. 14:34:28</p> <p>3 Q. And you saying that you're eating crow 14:34:30</p> <p>4 again. 14:34:34</p> <p>5 A. Yes. 14:34:34</p> <p>6 Q. What do you mean by that? 14:34:34</p> <p>7 A. So, basically, the disagreement that 14:34:36</p> <p>8 Mr. Fontaine and I had at the board was I believed I 14:34:40</p> <p>9 was in compliance because I had been doing the board 14:34:43</p> <p>10 every two weeks, as I had been trained by Mr. Wnuk. 14:34:46</p> <p>11 So my position was I am not out of date. And 14:34:52</p> <p>12 then I -- I told you right afterwards I contacted 14:34:57</p> <p>13 Mr. Francis, and he told me, in fact, that I was 14:35:01</p> <p>14 supposed to be doing it every week. 14:35:07</p> <p>15 I did not know there was even a manual online 14:35:09</p> <p>16 for how to do the board at that point. So he -- he 14:35:13</p> <p>17 showed me, he said, you can go on the mainframe and 14:35:17</p> <p>18 you can pull up how the pitch board is supposed to be 14:35:20</p> <p>19 run. And in there it says you're supposed to do it 14:35:23</p> <p>20 every week. 14:35:26</p> <p>21 So in response to finding out that I was 14:35:27</p> <p>22 incorrect, I am somebody that will advocate strongly 14:35:30</p> <p>23 on behalf of my positions. I am not going to shy away 14:35:34</p> <p>24 from somebody if I believe I'm right. 14:35:41</p> <p>25 So I was forceful with Mr. Fontaine. But I'm 14:35:43</p>
155	157
<p>1 every two weeks, so I was ten days out from the date I 14:33:13</p> <p>2 had done it last, which made it only three days late 14:33:16</p> <p>3 in actuality. 14:33:20</p> <p>4 And he became upset, Mr. Fontaine, and said, 14:33:21</p> <p>5 you know, with shoddy work like this, don't worry 14:33:25</p> <p>6 about Flatley firing you, I'll fire you myself. And 14:33:31</p> <p>7 he said I can get a -- a supervisor in that makes far 14:33:36</p> <p>8 less than you that would keep this board up to date. 14:33:41</p> <p>9 And, again, I looked at that as just he's going 14:33:44</p> <p>10 off, he's pissed, and so I contacted Mr., you know, 14:33:47</p> <p>11 Mr. Francis after that. 14:33:55</p> <p>12 Q. And did you ever take the position that you 14:33:58</p> <p>13 didn't have responsibility for the safety or the 5-S 14:34:00</p> <p>14 audits? 14:34:05</p> <p>15 A. No, never have, never did. 14:34:05</p> <p>16 Q. Let me have you look at Exhibit 11. 14:34:07</p> <p>17 (Exhibit 11 previously marked 14:34:10</p> <p>18 for identification and referenced</p> <p>19 herein: Email correspondence from</p> <p>20 (topmost) E Baker to D Fontaine</p> <p>21 4/17/2014 SW0000493) 14:34:16</p> <p>22 MR. LEE: Are we skipping Exhibit 10, 14:34:16</p> <p>23 Connie? 14:34:19</p> <p>24 MS. BERTRAM: Yes, for now. 14:34:20</p> <p>25 Q. Exhibit 11 is an April 17, 2014 email from 14:34:22</p>	<p>1 also somebody that has accountability that, when I 14:35:48</p> <p>2 found out I was incorrect, rather than pop off to your 14:35:51</p> <p>3 boss about being right, when I found out I was wrong, 14:35:56</p> <p>4 I felt like I was eating crow and apologizing to him. 14:36:00</p> <p>5 And I think I -- I do apologize, yes, I say I'm 14:36:03</p> <p>6 sorry, because I feel that I found out I was wrong and 14:36:07</p> <p>7 part of being an accountable adult is you advocate for 14:36:12</p> <p>8 what you believe is right. If you find out you're 14:36:16</p> <p>9 wrong, you stand up and take your medicine, and that's 14:36:19</p> <p>10 what I did. 14:36:22</p> <p>11 Q. Let's turn to Exhibit 13. 14:36:22</p> <p>12 (Exhibit 13 previously marked 14:36:24</p> <p>13 for identification and referenced</p> <p>14 herein: Earl Baker's Training Program</p> <p>15 2/4/14 Baker0000096) 14:36:26</p> <p>16 Q. And that's "Earl Baker's Training Program," 14:36:26</p> <p>17 February 4th, 2014; is that right? 14:36:29</p> <p>18 A. I'm sorry. What are -- 14:36:32</p> <p>19 Q. It's Exhibit 13 on the tab. 14:36:34</p> <p>20 A. Oh, I'm sorry. Yes. All right. Yes. 14:36:37</p> <p>21 Q. And as a result of your performance review, 14:36:40</p> <p>22 you were placed on a -- on a performance improvement 14:36:45</p> <p>23 plan or a training program; is that right? 14:36:47</p> <p>24 A. Yes. Yes, I called it a remediation 14:36:49</p> <p>25 program, but yes. 14:36:52</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

41 (Pages 158 to 161)

158	160
<p>1 Q. And was -- did Mr. Flatley provide this 14:36:53</p> <p>2 remediation plan to you during your evaluation 14:36:58</p> <p>3 meeting? 14:37:00</p> <p>4 <b>A. Yes. That's -- when he said, you're not 14:37:00</b></p> <p>5 <b>going to want to do this shit, you're going to want to 14:37:04</b></p> <p>6 <b>quit, this is what he was referring to. 14:37:06</b></p> <p>7 Q. And the remediation plan has some seminars 14:37:08</p> <p>8 and trainings to go to; is that right? 14:37:13</p> <p>9 <b>A. Yes. 14:37:15</b></p> <p>10 Q. And at the bottom it has a listing of four 14:37:16</p> <p>11 projects, correct? 14:37:21</p> <p>12 <b>A. I see three. 14:37:25</b></p> <p>13 Q. There's -- there's a project -- if you look 14:37:27</p> <p>14 at positions, and then there's three more. 14:37:33</p> <p>15 <b>A. Yes, one is given twice. 14:37:34</b></p> <p>16 Q. Right. Right. And these were goals that 14:37:35</p> <p>17 had previously been provided to you by Mr. Flatley 14:37:43</p> <p>18 during your weekly meetings with him; is that right? 14:37:47</p> <p>19 <b>A. Yes. And, again, I want to stress that you 14:37:49</b></p> <p>20 <b>putting it down as goals that Mr. Flatley gave me, 14:37:53</b></p> <p>21 <b>again, Mr. Flatley did not have my training, so he 14:37:56</b></p> <p>22 <b>didn't mandate goals. He asked, what things are you 14:38:03</b></p> <p>23 <b>working on, and then he would make sure that I was 14:38:06</b></p> <p>24 <b>progressing towards the things that we mutually 14:38:10</b></p> <p>25 <b>agreed, but it was not a thing where he dictated, this 14:38:14</b></p>	<p>1 <b>A. Those are Bates numbers you gave? 14:50:18</b></p> <p>2 Q. Yes. 14:50:20</p> <p>3 <b>A. Could you give them again? 14:50:20</b></p> <p>4 Q. It starts at 351 and it goes to 354. 14:50:22</p> <p>5 <b>A. Okay. Yeah. 14:50:40</b></p> <p>6 Q. And you described previously a notebook 14:50:43</p> <p>7 that you -- that you used to take notes? 14:50:46</p> <p>8 <b>A. Yes. 14:50:48</b></p> <p>9 Q. And this is the second one that you had, 14:50:49</p> <p>10 right? 14:50:53</p> <p>11 <b>A. Yes. 14:50:53</b></p> <p>12 Q. And did you start using it on March 28th of 14:50:54</p> <p>13 2014? 14:50:57</p> <p>14 <b>A. I'm not sure of the date I first started 14:51:01</b></p> <p>15 <b>using it. 14:51:03</b></p> <p>16 Q. Okay. Are all the handwritten notes on 14:51:03</p> <p>17 pages 351 through 354 in your handwriting? 14:51:08</p> <p>18 <b>A. Yes. 14:51:13</b></p> <p>19 Q. And they have notes for the days March 28, 14:51:14</p> <p>20 April 17, April 18, April 30; is that right? 14:51:18</p> <p>21 <b>A. I see April 18. I don't see the 30. That 14:51:24</b></p> <p>22 <b>would be on the next page? 14:51:28</b></p> <p>23 Q. That's right. 14:51:30</p> <p>24 <b>A. Okay. Yes. Do you want me to read them 14:51:30</b></p> <p>25 <b>or what notes -- 14:51:51</b></p>
159	161
<p>1 is what I want you to do. It was, what are you 14:38:18</p> <p>2 working on and why, and then he just was a manager -- 14:38:21</p> <p>3 which I think is a reasonable approach, that he can 14:38:28</p> <p>4 keep me to the task that I need to be doing without 14:38:31</p> <p>5 necessarily knowing too much what I'm doing, you know, 14:38:35</p> <p>6 how to do what I'm doing. 14:38:38</p> <p>7 <b>So it's a reasonable and I thought smart way to 14:38:39</b></p> <p>8 <b>go about it, but I kind of object to it every time 14:38:46</b></p> <p>9 <b>it's being mentioned as if these were Flatley mandates 14:38:50</b></p> <p>10 <b>that I was given. No, these were projects I'm working 14:38:55</b></p> <p>11 <b>on, and he's just keeping me up to date on progress 14:38:58</b></p> <p>12 <b>and making sure we're making progress. 14:39:02</b></p> <p>13 MR. LEE: Can we take a quick five-minute 14:39:25</p> <p>14 break, Connie, while you're looking for whatever 14:39:26</p> <p>15 you're looking for? 14:39:29</p> <p>16 MS. BERTRAM: That would be great. 14:39:30</p> <p>17 VIDEO SPECIALIST: It's 2:39 p.m., we're 14:39:31</p> <p>18 off the record. 14:39:34</p> <p>19 (Proceedings recessed) 14:39:34</p> <p>20 VIDEO SPECIALIST: The time is 2:50 p.m., 14:40:48</p> <p>21 and we're back on the record. 14:50:00</p> <p>22 BY MS. BERTRAM: 14:50:02</p> <p>23 Q. Mr. Baker, if I can have you go to pages 14:50:02</p> <p>24 351, 352, and 353, and 355 of -- of your production 14:50:06</p> <p>25 documents. 14:50:12</p>	<p>1 Q. Are they all in your handwriting? 14:51:51</p> <p>2 <b>A. Yes, they are. I said that. 14:51:54</b></p> <p>3 Q. And -- and they show notes for those three 14:51:55</p> <p>4 particular days, right? 14:51:58</p> <p>5 <b>A. Yes. 14:51:59</b></p> <p>6 Q. This is, I think, what's called a moleskin 14:51:59</p> <p>7 notebook; is that right? 14:52:03</p> <p>8 <b>A. Yes. 14:52:04</b></p> <p>9 Q. And do you recall making notes in your 14:52:04</p> <p>10 moleskin other than for these three days? 14:52:08</p> <p>11 <b>A. I recall making them for other days, but I 14:52:10</b></p> <p>12 <b>can't -- I can't say that I used it, you know, how 14:52:16</b></p> <p>13 <b>often I used it. Probably should have used it more 14:52:22</b></p> <p>14 <b>often than I did. 14:52:25</b></p> <p>15 Q. And you said that you still have a copy of 14:52:26</p> <p>16 this notebook, correct? 14:52:28</p> <p>17 <b>A. Yes, I believe I still have this. 14:52:29</b></p> <p>18 Q. And where is that located? 14:52:31</p> <p>19 <b>A. In my closet, I believe. 14:52:33</b></p> <p>20 Q. Pardon me? 14:52:34</p> <p>21 <b>A. I believe it's in my closet. 14:52:35</b></p> <p>22 Q. And the notes that you made each day, did 14:52:36</p> <p>23 you make them contemporaneously or after the fact? 14:52:40</p> <p>24 <b>A. That day, I think. 14:52:42</b></p> <p>25 Q. So would it be later in the day after you 14:52:45</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

42 (Pages 162 to 165)

162	164
<p>1 left work or during the course of the workday? 14:52:48</p> <p>2 <b>A. I can't say. I mean, it could have been</b> 14:52:51</p> <p>3 <b>either.</b> 14:52:54</p> <p>4 <b>Q. Pardon me?</b> 14:52:55</p> <p>5 <b>A. It could have been either. I can't really</b> 14:52:55</p> <p>6 <b>say. It's such a long time ago.</b> 14:52:58</p> <p>7 <b>Q. Would it be fair to say that they were made</b> 14:52:59</p> <p>8 <b>within 24 hours of the events described?</b> 14:53:01</p> <p>9 <b>A. Oh, yeah, I would say.</b> 14:53:06</p> <p>10 <b>Q. And did you ever provide these notes to</b> 14:53:07</p> <p>11 <b>anybody at Smith &amp; Wesson?</b> 14:53:09</p> <p>12 <b>A. No. They were -- I don't believe so.</b> 14:53:10</p> <p>13 <b>Q. We talked about two meetings that you</b> 14:53:18</p> <p>14 <b>attended with HR and with your supervisors after your</b> 14:53:20</p> <p>15 <b>February 2014 evaluation. Did you have any other</b> 14:53:25</p> <p>16 <b>meetings with HR after the second one that you've</b> 14:53:29</p> <p>17 <b>already described?</b> 14:53:32</p> <p>18 <b>A. About any circumstance or about -- or what?</b> 14:53:34</p> <p>19 <b>Q. About Larry Flatley, the HR issues and</b> 14:53:37</p> <p>20 <b>concerns that you had with respect to Larry Flatley.</b> 14:53:41</p> <p>21 <b>A. We had multiple HR issues that they were</b> 14:53:44</p> <p>22 <b>involved with, one being over the hiring practice, one</b> 14:53:48</p> <p>23 <b>over Pavel being the successor to Dan Durrand. It</b> 14:53:55</p> <p>24 <b>just seemed like we were constantly -- so they -- I</b> 14:54:07</p> <p>25 <b>needed to get somebody to replace Dan, and Larry</b> 14:54:15</p>	<p>1 that point? 14:55:52</p> <p>2 <b>A. We still kept our regular meeting, but --</b> 14:55:53</p> <p>3 <b>Q. Pardon me?</b> 14:55:56</p> <p>4 <b>A. We still kept our regular meeting --</b> 14:55:57</p> <p>5 <b>Q. Okay.</b> 14:55:59</p> <p>6 <b>A. -- where it was just the two of us, but</b> 14:56:00</p> <p>7 <b>there were other occasions where others were involved.</b> 14:56:02</p> <p>8 <b>Q. Where others were in there?</b> 14:56:07</p> <p>9 <b>A. Yes.</b> 14:56:09</p> <p>10 <b>Q. Okay. I'm really struggling to hear you.</b> 14:56:10</p> <p>11 <b>And I hate -- I hate interrupting to ask you to repeat</b> 14:56:13</p> <p>12 <b>yourself.</b> 14:56:16</p> <p>13 <b>And during the course of those meetings, did</b> 14:56:18</p> <p>14 <b>Mr. Flatley and/or Mr. Fontaine talk with you about</b> 14:56:22</p> <p>15 <b>your progress towards the goals that were identified</b> 14:56:25</p> <p>16 <b>in your remediation plan?</b> 14:56:28</p> <p>17 <b>A. Larry at one point involved Mr. Fontaine</b> 14:56:33</p> <p>18 <b>stating that I had made no progress on those issues</b> 14:56:41</p> <p>19 <b>and which was false.</b> 14:56:51</p> <p>20 <b>Q. Did he -- did he provide you with input on</b> 14:56:55</p> <p>21 <b>how he perceived that you were performing on your</b> 14:56:59</p> <p>22 <b>goals in the remediation plan?</b> 14:57:02</p> <p>23 <b>A. Who is "he"?</b> 14:57:05</p> <p>24 <b>Q. Mr. Flatley.</b> 14:57:06</p> <p>25 <b>A. He, like I said, would make -- just out of</b> 14:57:08</p>
163	165
<p>1 <b>disagreed, so we ended up at HR.</b> 14:54:18</p> <p>2 <b>Q. Mr. Baker, I need you to keep your voice up</b> 14:54:21</p> <p>3 <b>because we're having a real -- I have you on the</b> 14:54:23</p> <p>4 <b>highest setting for -- for volume, and we're really</b> 14:54:24</p> <p>5 <b>struggling to hear you.</b> 14:54:29</p> <p>6 <b>MR. LEE: Earl, can you -- can you turn it</b> 14:54:30</p> <p>7 <b>up a little at your end? Remember we did that this</b> 14:54:33</p> <p>8 <b>morning?</b> 14:54:36</p> <p>9 <b>THE WITNESS: Sure. I'm not sure how I did</b> 14:54:36</p> <p>10 <b>it.</b> 14:55:10</p> <p>11 <b>MR. LEE: You sound fine to me right now.</b> 14:55:11</p> <p>12 <b>Q. Just try and keep your voice up.</b> 14:55:13</p> <p>13 <b>MR. LEE: Yeah.</b> 14:55:16</p> <p>14 <b>A. I think I might have put my arm in front of</b> 14:55:16</p> <p>15 <b>the microphone that's on the cord.</b> 14:55:18</p> <p>16 <b>Q. Okay. So let me -- let me focus our -- let</b> 14:55:20</p> <p>17 <b>me back up a little bit.</b> 14:55:24</p> <p>18 <b>You received the evaluation. You had two</b> 14:55:25</p> <p>19 <b>meetings with your supervisors after that. During the</b> 14:55:29</p> <p>20 <b>period between your February review and your June</b> 14:55:36</p> <p>21 <b>review, did you continue to have weekly meetings with</b> 14:55:39</p> <p>22 <b>Mr. Flatley?</b> 14:55:43</p> <p>23 <b>A. Yes.</b> 14:55:43</p> <p>24 <b>Q. And was it just you and Mr. Flatley, or was</b> 14:55:44</p> <p>25 <b>Mr. Fontaine also participating in those meetings at</b> 14:55:49</p>	<p>1 <b>these, you know, just exorbitantly fantastic claims,</b> 14:57:16</p> <p>2 <b>he would overstate things. No progress had been made</b> 14:57:24</p> <p>3 <b>on it is what he said to Mr. Fontaine. And I took</b> 14:57:28</p> <p>4 <b>with me the proof that what he said was absolutely</b> 14:57:32</p> <p>5 <b>false.</b> 14:57:37</p> <p>6 <b>Q. Do you recall him providing any other input</b> 14:57:40</p> <p>7 <b>to you on your -- on your progress, on your goals in</b> 14:57:43</p> <p>8 <b>the remediation plan?</b> 14:57:46</p> <p>9 <b>A. Yes. He made that same claim a number of</b> 14:57:47</p> <p>10 <b>times, but we had one meeting where we sat down</b> 14:57:51</p> <p>11 <b>together and Mr. Flatley -- we looked at it -- you and</b> 14:57:57</p> <p>12 <b>I looked at it about an hour ago -- where Mr. Flatley</b> 14:58:03</p> <p>13 <b>wrote on there, complete, complete, complete,</b> 14:58:06</p> <p>14 <b>complete. And so that's Mr. Flatley's handwriting.</b> 14:58:08</p> <p>15 <b>So we did have interactions where we spoke</b> 14:58:11</p> <p>16 <b>about those things, and he wrote "complete." But</b> 14:58:14</p> <p>17 <b>Larry is, after the fact, after that meeting where he</b> 14:58:20</p> <p>18 <b>wrote "complete," went to Dan Fontaine and said I've</b> 14:58:23</p> <p>19 <b>made no progress on it, and I carried with me a copy</b> 14:58:26</p> <p>20 <b>of what Mr. Flatley had written, complete, complete,</b> 14:58:32</p> <p>21 <b>complete, and showed it to Mr. Fontaine, and that</b> 14:58:35</p> <p>22 <b>ended the conversation.</b> 14:58:39</p> <p>23 <b>Mr. Fontaine didn't say anything negative</b> 14:58:40</p> <p>24 <b>toward me, because he saw the proof right in front of</b> 14:58:42</p> <p>25 <b>him that Mr. Flatley was lying straight to his face.</b> 14:58:45</p>

Baker, Earl Donald

August 14, 2020

43 (Pages 166 to 169)

166	168
<p>1 Q. So going back, you -- you made a reference 14:58:50</p> <p>2 to Exhibit 13, which has some handwritten notations on 14:58:51</p> <p>3 it. The words "complete" are next to three trainings. 14:58:55</p> <p>4 <b>A. Yes.</b> 14:59:01</p> <p>5 Q. And then also the M&amp;P Pistol Armorer 14:59:02</p> <p>6 School, correct? 14:59:08</p> <p>7 <b>A. Yes.</b> 14:59:08</p> <p>8 Q. But he doesn't note that any of the 14:59:09</p> <p>9 projects -- the four projects at the bottom were 14:59:10</p> <p>10 complete, correct? 14:59:15</p> <p>11 <b>A. Yes, because the nature of those projects 14:59:15</b></p> <p>12 <b>were -- were ongoing things. They weren't like a 14:59:17</b></p> <p>13 <b>singular thing, like go to a class. It's -- it's 14:59:22</b></p> <p>14 <b>creating a support system to ship M&amp;P slide tools back 14:59:29</b></p> <p>15 <b>and forth to Houlton. That isn't a one-time event. 14:59:32</b></p> <p>16 <b>That's an ongoing thing. So he wouldn't write 14:59:35</b></p> <p>17 <b>"complete." But, in fact, we did complete those 14:59:38</b></p> <p>18 <b>things.</b> 14:59:43</p> <p>19 <b>But when you're saying that nothing had been 14:59:44</b></p> <p>20 <b>done yet we can see Mr. Flatley's notations 14:59:48</b></p> <p>21 <b>"complete," his credibility on what he says I 14:59:56</b></p> <p>22 <b>accomplished on those projects is also subject to the 14:59:59</b></p> <p>23 <b>same kind of scrutiny. The guy that's going to lie to 15:00:03</b></p> <p>24 <b>you on the first half, you're not going to say, well, 15:00:06</b></p> <p>25 <b>he wouldn't lie on the -- he wouldn't lie on the 15:00:09</b></p>	<p>1 <b>A. I couldn't be certain.</b> 15:01:14</p> <p>2 Q. Pardon me? 15:01:18</p> <p>3 <b>A. I'm not certain what date we met.</b> 15:01:18</p> <p>4 Q. Where did the meeting take place? 15:01:20</p> <p>5 <b>A. Anne Bruce's office.</b> 15:01:22</p> <p>6 Q. And how long did the meeting last? 15:01:26</p> <p>7 <b>A. She said it lasted hours in her notes, but 15:01:29</b></p> <p>8 <b>it lasted probably about an hour.</b> 15:01:37</p> <p>9 Q. And let's look at Exhibit 15. 15:01:40</p> <p>10 (Exhibit 15 previously marked 15:01:42</p> <p>11 for identification and referenced</p> <p>12 herein: E. Baker Goals 6/18/14 with</p> <p>13 handwritten notes</p> <p>14 Baker0000181 - Baker0000182) 15:01:42</p> <p>15 Q. Is this a document entitled "E. Baker Goals 15:01:42</p> <p>16 - 6/18/14"? 15:01:47</p> <p>17 <b>A. Yes.</b> 15:01:50</p> <p>18 Q. And this is a two-page document, correct? 15:01:51</p> <p>19 <b>A. I can't be -- I doubt -- those don't look 15:01:55</b></p> <p>20 <b>like the same document, no.</b> 15:02:06</p> <p>21 Q. Okay. Let's just focus on the first page, 15:02:08</p> <p>22 which is Baker 181, the goals document. And this 15:02:10</p> <p>23 identifies a project plan for you for your June 2014 15:02:16</p> <p>24 evaluation? 15:02:22</p> <p>25 <b>A. Yes.</b> 15:02:23</p>
167	169
<p>1 <b>projects, he just lied on the top.</b> 15:00:12</p> <p>2 Q. Let's go to Exhibit 14. 15:00:15</p> <p>3 (Exhibit 14 previously marked 15:00:17</p> <p>4 for identification and referenced</p> <p>5 herein: Performance Appraisal 6/5/14</p> <p>6 Baker0000176 - Baker0000178) 15:00:18</p> <p>7 Q. And this is a June 5, 2014 Performance 15:00:18</p> <p>8 Evaluation that you received, correct? 15:00:21</p> <p>9 <b>A. Right.</b> 15:00:23</p> <p>10 Q. And this was completed, to your knowledge, 15:00:25</p> <p>11 by Mr. Flatley; is that right? 15:00:28</p> <p>12 <b>A. Yes.</b> 15:00:29</p> <p>13 Q. And do you know whether anyone else had 15:00:30</p> <p>14 input on your evaluation? 15:00:32</p> <p>15 <b>A. No, I don't.</b> 15:00:34</p> <p>16 Q. Pardon me? 15:00:35</p> <p>17 <b>A. No, I don't know.</b> 15:00:37</p> <p>18 Q. And -- and did you meet with Mr. Flatley to 15:00:39</p> <p>19 discuss the evaluation? 15:00:44</p> <p>20 <b>A. In the -- this review, he forwarded a copy 15:00:47</b></p> <p>21 <b>of it, and I met with himself, Ann Glica -- I'm sorry, 15:00:53</b></p> <p>22 <b>Anne Bruce -- and Mr. Fontaine. So the review took 15:01:01</b></p> <p>23 <b>place with three of us in the room, not just one.</b> 15:01:05</p> <p>24 Q. And -- and that was on June 18 of 2014, 15:01:08</p> <p>25 right? 15:01:13</p>	<p>1 Q. And this -- these are your handwritings on 15:02:24</p> <p>2 this page, correct? 15:02:27</p> <p>3 <b>A. Appears to be.</b> 15:02:30</p> <p>4 Q. Pardon me? 15:02:31</p> <p>5 <b>A. It appears to be.</b> 15:02:32</p> <p>6 Q. Okay. And did you take these notes during 15:02:33</p> <p>7 your meeting with Ms. Bruce, Mr. Fontaine, and 15:02:36</p> <p>8 Mr. Flatley? 15:02:39</p> <p>9 <b>A. I can't say when I took the notes. We 15:02:40</b></p> <p>10 <b>could have taken them during there, could have been my 15:02:47</b></p> <p>11 <b>notes afterwards. I don't -- I don't recall.</b> 15:02:51</p> <p>12 Q. And do your notes reflect the substance of 15:02:51</p> <p>13 your communications during the meeting with Ms. Bruce 15:02:54</p> <p>14 and Mr. Fontaine and Mr. Flatley? 15:02:58</p> <p>15 <b>A. Yes, they appear to be.</b> 15:03:01</p> <p>16 Q. Pardon me? 15:03:02</p> <p>17 <b>A. Yes, they appear to be.</b> 15:03:03</p> <p>18 Q. Okay. And did you discuss these goals with 15:03:04</p> <p>19 Mr. Flatley and Mr. Fontaine during the meeting? 15:03:09</p> <p>20 <b>A. It wasn't a discussion. They -- they gave 15:03:12</b></p> <p>21 <b>me these goals, and we didn't go into a great deal of 15:03:22</b></p> <p>22 <b>discussion.</b> 15:03:28</p> <p>23 Q. And do you recall what happened during the 15:03:30</p> <p>24 course of the meeting with Ms. Bruce, Mr. Flatley, and 15:03:34</p> <p>25 Mr. Fontaine? 15:03:37</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

44 (Pages 170 to 173)

170	172
<p>1 MR. LEE: Objection to the form of the 15:03:38</p> <p>2 question, but you may answer. 15:03:40</p> <p>3 A. Yeah, I recall. 15:03:42</p> <p>4 Q. You don't recall anything that happened 15:03:44</p> <p>5 during the meeting? 15:03:46</p> <p>6 A. Yeah, I said, yes, I recall. 15:03:46</p> <p>7 Q. Okay. 15:03:48</p> <p>8 A. You asked me did I recall, and yes. 15:03:49</p> <p>9 Q. I'm just struggling because I'm having a 15:03:50</p> <p>10 really hard time hearing you. 15:03:52</p> <p>11 And what happened during the meeting? 15:03:54</p> <p>12 A. We went down the portions of the review. I 15:03:56</p> <p>13 had also written a rebuttal. There were issues that, 15:04:06</p> <p>14 again, were factually incorrect. I had listed and I 15:04:11</p> <p>15 had sent a copy of this to Mr. Flatley and to Anne 15:04:17</p> <p>16 Bruce and to Mr. Fontaine prior to the meeting, and 15:04:21</p> <p>17 they said you had listed eight factually incorrect 15:04:28</p> <p>18 things on the review. For the time purposes of this 15:04:33</p> <p>19 review, we're not going to talk about all eight. 15:04:37</p> <p>20 We'll allow you to speak on one issue and one issue 15:04:41</p> <p>21 only. 15:04:44</p> <p>22 And so I spoke to them about the timeliness of 15:04:48</p> <p>23 -- of contacting the slide department on the slide 15:04:56</p> <p>24 surface issue and showed them that -- told them that I 15:05:00</p> <p>25 had responded right away and that they were talking to 15:05:06</p>	<p>1 Q. And I'll note that that's at page 182 of 15:06:35</p> <p>2 your production. 15:06:39</p> <p>3 Do you recall when you made those notes? 15:06:40</p> <p>4 A. No, I don't, but I do notice that -- 15:06:42</p> <p>5 MR. LEE: I'm sorry. I'm sorry. Which one 15:06:46</p> <p>6 are we on right now? I'm sorry. 15:06:47</p> <p>7 MS. BERTRAM: The second page of Exhibit 15:06:49</p> <p>8 15, which is Bates stamped 182. 15:06:51</p> <p>9 MR. LEE: Okay. Did we establish that 15:06:53</p> <p>10 these two pages are -- belong together? 15:06:57</p> <p>11 MS. BERTRAM: He indicated they do not 15:07:01</p> <p>12 belong together. 15:07:03</p> <p>13 MR. LEE: Okay. Got it. 15:07:03</p> <p>14 A. If you notice, the first page is not lined. 15:07:05</p> <p>15 The second page is lined from a notebook. So they 15:07:08</p> <p>16 cannot be from the same page. 15:07:10</p> <p>17 Q. Right. But my question is, do you know 15:07:15</p> <p>18 when you prepared these handwritten notes on the 15:07:18</p> <p>19 second page of Exhibit 15? 15:07:20</p> <p>20 A. No, I can't -- I can't tell you. 15:07:23</p> <p>21 Q. Pardon me? 15:07:25</p> <p>22 A. No, I cannot tell you when they were made. 15:07:27</p> <p>23 There's no dates on it. 15:07:30</p> <p>24 Q. Let's go to Exhibit 16. 15:07:31</p> <p>25 (Exhibit 16 previously marked 15:07:34</p>
171	173
<p>1 me about why I hadn't responded earlier. I was at my 15:05:12</p> <p>2 brother-in-law's funeral. And no one called me during 15:05:17</p> <p>3 that time frame to tell me there's a problem. 15:05:20</p> <p>4 And as far as I was concerned, it would -- it 15:05:24</p> <p>5 had been resolved before I left. And it was the exact 15:05:27</p> <p>6 same problem that happened months earlier. Yet, 15:05:30</p> <p>7 again, Mr. Flatley, rather than fix the thing, based 15:05:35</p> <p>8 on what had happened in the prior situation, allowed 15:05:40</p> <p>9 it to fester so that he could point a finger 15:05:44</p> <p>10 afterwards. 15:05:47</p> <p>11 And, as a matter of fact, when we got to the 15:05:48</p> <p>12 point afterwards, he told me and ordered me not to say 15:05:51</p> <p>13 anything. So he was creating the situations so that 15:05:55</p> <p>14 he could write them up. He tells me not to respond at 15:05:59</p> <p>15 all and then writes me up for not responding quickly 15:06:03</p> <p>16 enough. He tells me to restock all the carbide, which 15:06:06</p> <p>17 allowed -- which was a hundred thousand dollar 15:06:11</p> <p>18 expenditure, and then he writes me up for being a 15:06:14</p> <p>19 hundred thousand dollars over budget. 15:06:17</p> <p>20 So those were the issues that we discussed. 15:06:20</p> <p>21 It's in the rebuttal. And they didn't permit me to 15:06:23</p> <p>22 even go into those things. 15:06:27</p> <p>23 Q. Let's go to the second page of Exhibit 15. 15:06:29</p> <p>24 Are those your handwritten notes? 15:06:32</p> <p>25 A. Yes. 15:06:34</p>	<p>1 for identification and referenced 15:07:34</p> <p>2 herein: Earl Baker 2014 Review 15:07:34</p> <p>3 Rebuttal Baker0000172 - Baker0000175) 15:07:34</p> <p>4 Q. Is this the rebuttal that you've described? 15:07:34</p> <p>5 A. Yes. 15:07:40</p> <p>6 Q. And did you draft this yourself? 15:07:41</p> <p>7 A. Yes. 15:07:43</p> <p>8 Q. And was anybody else involved in drafting 15:07:43</p> <p>9 it? 15:07:46</p> <p>10 A. Not that I'm aware of. 15:07:47</p> <p>11 Q. And did anybody review it before you 15:07:49</p> <p>12 provided it to Smith &amp; Wesson? 15:07:52</p> <p>13 A. Not that I'm aware of. 15:07:55</p> <p>14 Q. Pardon me? 15:07:57</p> <p>15 A. Not that I'm aware of. 15:07:58</p> <p>16 Q. And who did you provide this to at 15:07:59</p> <p>17 Smith &amp; Wesson? 15:08:03</p> <p>18 A. As I said, I gave a copy to Mr. Flatley, 15:08:04</p> <p>19 one to Anne Bruce, and one to Mr. Fontaine. 15:08:09</p> <p>20 Q. Did you provide it at the meeting? 15:08:12</p> <p>21 A. I emailed it prior to the meeting and then 15:08:15</p> <p>22 carried a copy to the meeting figuring that I didn't 15:08:18</p> <p>23 want to hand it out when I was there, I wanted a 15:08:22</p> <p>24 chance to -- to go over it so that we would all 15:08:24</p> <p>25 discuss it together. 15:08:27</p>



Baker, Earl Donald

August 14, 2020

45 (Pages 174 to 177)

174	176
<p>1 And all it ended up doing was it caused them to 15:08:29</p> <p>2 realize we don't want to go into these issues if we're 15:08:33</p> <p>3 going to railroad Earl, so they just told me I could 15:08:36</p> <p>4 talk about one issue. Sorry. That's my -- my 15:08:39</p> <p>5 impression. 15:08:43</p> <p>6 Q. And after you received the remediation plan 15:08:47</p> <p>7 and met with Mr. Fontaine, Mr. Flatley, and Ms. Bruce, 15:08:55</p> <p>8 did you continue to have your weekly meetings with 15:09:02</p> <p>9 Mr. -- Mr. Flatley? 15:09:06</p> <p>10 A. Yes. I had my regular meetings with him, 15:09:07</p> <p>11 and for people that said that we were losing control 15:09:12</p> <p>12 of the department, I still met Mr. Flatley every day 15:09:17</p> <p>13 at the pitch board and wished him good morning. If 15:09:21</p> <p>14 you were visiting that department from -- and didn't 15:09:26</p> <p>15 know anything that went on, you would not have known 15:09:30</p> <p>16 that we had an issue, because I felt like any personal 15:09:33</p> <p>17 issue I had with him is -- has nothing to do with my 15:09:38</p> <p>18 job. I could do my job just fine, and any personal 15:09:41</p> <p>19 issues I have with Larry, when I punched out, those 15:09:45</p> <p>20 punched out with me. And then when I came back in, I 15:09:49</p> <p>21 had the responsibility of that company to represent 15:09:52</p> <p>22 Smith &amp; Wesson in the best possible light. And for a 15:09:55</p> <p>23 supervisor of that company, you don't want to have cat 15:09:59</p> <p>24 fights when you're representing somebody else. That's 15:10:05</p> <p>25 a personal issue. 15:10:06</p>	<p>1 would stop back and ask me if I read this or read 15:11:29</p> <p>2 that. So, yes, my interaction took place with 15:11:33</p> <p>3 Mr. Francis up until the day I left. 15:11:36</p> <p>4 Q. And did you continue to receive coaching 15:11:39</p> <p>5 from Mr. Suraci after you received this evaluation and 15:11:41</p> <p>6 the remediation plan? 15:11:46</p> <p>7 MR. LEE: Objection to the form of the 15:11:47</p> <p>8 question, but you may answer. 15:11:48</p> <p>9 A. I had interaction with -- with Mr. Suraci 15:11:51</p> <p>10 up to a certain point, but I would believe -- I can't 15:11:55</p> <p>11 tell you the exact date, but there came a certain date 15:12:01</p> <p>12 where I never talked to him again. He just was -- was 15:12:07</p> <p>13 gone. 15:12:12</p> <p>14 And even when we had this last review meeting, 15:12:13</p> <p>15 he said, come down to my office and tell me how it 15:12:19</p> <p>16 went. I went down and told him that it went horribly. 15:12:21</p> <p>17 And he said, did they offer you to be moved to another 15:12:26</p> <p>18 department, and I said no. And he asked me again, are 15:12:31</p> <p>19 you sure they didn't ask you to be moved to another 15:12:36</p> <p>20 department, and I said no, I'm quite certain they did 15:12:39</p> <p>21 not offer me anything of the sort. 15:12:44</p> <p>22 And that was the end of the conversation, and I 15:12:48</p> <p>23 don't believe I talked to Mr. Suraci again after that 15:12:50</p> <p>24 time. 15:12:53</p> <p>25 Q. And about three weeks after your meeting 15:12:54</p>
175	177
<p>1 And so, yes, we had the meetings up until the 15:10:08</p> <p>2 day I left, and we also had our daily pitch board 15:10:10</p> <p>3 meetings. But I will note that, after things got 15:10:16</p> <p>4 difficult, Larry had never missed more than one pitch 15:10:20</p> <p>5 board meeting up to that point, but towards the end 15:10:23</p> <p>6 Larry was missing the pitch board meetings fairly 15:10:27</p> <p>7 regularly. 15:10:30</p> <p>8 Q. And when he was unable to go, did somebody 15:10:32</p> <p>9 else go instead of him -- 15:10:35</p> <p>10 A. No. 15:10:39</p> <p>11 Q. -- like Mr. Fontaine? 15:10:39</p> <p>12 A. We were standing there at 8:15, and he 15:10:39</p> <p>13 could have emailed us ahead of time. And a lot of 15:10:42</p> <p>14 times we would just stand there and he would never 15:10:45</p> <p>15 show up. We would just go back to work. A few times 15:10:47</p> <p>16 he would email us ahead or text ahead and say no 15:10:51</p> <p>17 meeting today. 15:10:54</p> <p>18 Q. Did -- after you received the remediation 15:10:57</p> <p>19 plan and the evaluation, did you continue to receive 15:11:01</p> <p>20 coaching from Mr. Francis? 15:11:03</p> <p>21 A. We -- I did in that he gave me books to 15:11:06</p> <p>22 read. So Bob was not somebody who took that 15:11:10</p> <p>23 responsibility lightly and said, we'll just mail it 15:11:15</p> <p>24 in. No, he took the responsibility and gave me a book 15:11:18</p> <p>25 to read on Toyota and one on lean systems. And so he 15:11:22</p>	<p>1 with Ms. Bruce, Mr. Fontaine, and Mr. Flatley, you 15:12:59</p> <p>2 took some vacation leave; is that right? 15:13:04</p> <p>3 A. Yes. 15:13:06</p> <p>4 Q. And that followed a meeting with 15:13:07</p> <p>5 Mr. Cicero, correct? 15:13:12</p> <p>6 A. Correct. 15:13:13</p> <p>7 Q. That was around July 4th; is that right? 15:13:14</p> <p>8 A. Yes. 15:13:17</p> <p>9 Q. Okay. What precipitated that meeting, if 15:13:17</p> <p>10 you know? 15:13:24</p> <p>11 A. He called me on the phone and said he 15:13:24</p> <p>12 wanted to talk. So we went to his office, and I 15:13:27</p> <p>13 think, as the meeting unfolded, both of us saw where 15:13:32</p> <p>14 we were heading. He told me, what if Flatley gave 15:13:39</p> <p>15 bids to other companies, Smith &amp; Wesson still got to 15:13:47</p> <p>16 buy at the cheapest rate, so what, you know, what's 15:13:51</p> <p>17 the harm to Smith &amp; Wesson? What if Larry did break 15:13:56</p> <p>18 into your office? What's the harm to Smith &amp; Wesson? 15:14:00</p> <p>19 What if Larry had done these things, you know, what's 15:14:03</p> <p>20 the harm? 15:14:06</p> <p>21 And we -- I tried to show him -- I said that -- 15:14:09</p> <p>22 that the review that we -- that I was given, I wasn't 15:14:15</p> <p>23 permitted to even address the factual errors in it, 15:14:21</p> <p>24 and I said, for one, the -- the RoboCrib report that 15:14:25</p> <p>25 he said I never created, and he goes on and on saying 15:14:34</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

46 (Pages 178 to 181)

178	180
<p>1 it's a great thing, I went to hand him a copy of it 15:14:37</p> <p>2 and Mr. Cicero said, I don't even need to see that, 15:14:40</p> <p>3 you can -- you could with a word processor make 15:14:44</p> <p>4 whatever. 15:14:48</p> <p>5 So he -- at that point I realized he wasn't 15:14:49</p> <p>6 there to investigate. He really wasn't interested in 15:14:51</p> <p>7 facts or the truth. He was -- he had an agenda. So 15:14:54</p> <p>8 at that point I kind of shut down. And he said he 15:14:59</p> <p>9 wanted to talk about terms for separation. 15:15:07</p> <p>10 So at that point he laid out what they would 15:15:11</p> <p>11 do, that he would talk to his boss. But he offered me 15:15:17</p> <p>12 something like two weeks severance or something like 15:15:21</p> <p>13 that, which that was a joke. 15:15:24</p> <p>14 And I was upset because at this point, as I'm 15:15:29</p> <p>15 faced with the prospect of -- I gave up my entire 15:15:31</p> <p>16 company and sold it at a loss to come here just for a 15:15:33</p> <p>17 bunch of clowns to -- to shove me out the door like 15:15:37</p> <p>18 this. I was pissed. 15:15:41</p> <p>19 And so I -- my reaction was I'm not going to 15:15:43</p> <p>20 waste any more energy trying to tell you what the 15:15:51</p> <p>21 truth is because you're not interested in the truth. 15:15:53</p> <p>22 So I asked for -- I had vacation time. I said 15:15:56</p> <p>23 I'd like to take this vacation time and think about 15:16:01</p> <p>24 your offer. And they said normally it's customary to 15:16:06</p> <p>25 ask for vacation time ahead of time, is that something 15:16:12</p>	<p>1 Ohio. And he may have mentioned the six months at 15:17:39</p> <p>2 that point, but six months was never mentioned by him 15:17:42</p> <p>3 or me in that meeting. 15:17:45</p> <p>4 Q. Now you said that you guys had been talking 15:17:52</p> <p>5 about SOX for some time, had been a part of the 15:17:59</p> <p>6 discussion for some time. Was that in discussions 15:18:01</p> <p>7 between you and Mr. Cicero? 15:18:03</p> <p>8 A. Yes. 15:18:05</p> <p>9 Q. And when did you first raise with him 15:18:05</p> <p>10 Sarbanes-Oxley? 15:18:08</p> <p>11 A. It had been part of the conversation from 15:18:10</p> <p>12 day one, because I would have never even known what 15:18:13</p> <p>13 Sarbanes-Oxley was had it not been for the LRN I took. 15:18:16</p> <p>14 But because they educated me on what the laws were, 15:18:24</p> <p>15 what was proper and what wasn't proper, I was just 15:18:27</p> <p>16 following through what they mandated that I took. So 15:18:32</p> <p>17 from day one this was part of the narrative. And 15:18:36</p> <p>18 Mr. Cicero was aware of that. 15:18:40</p> <p>19 Q. There was an employee in Mr. Flatley's 15:18:44</p> <p>20 department called Ron O'Brien, right? 15:18:49</p> <p>21 A. Yes. 15:18:51</p> <p>22 Q. And the two of you over time became 15:18:52</p> <p>23 friends; would that be fair to say? 15:18:56</p> <p>24 A. Yeah, I'd say so. 15:18:58</p> <p>25 Q. And you shared with him information about 15:19:00</p>
179	181
<p>1 you can make happen. 15:16:17</p> <p>2 He said, let me check into it and I'll get back 15:16:18</p> <p>3 with you. I went back to my office, started working, 15:16:21</p> <p>4 and I got a call from him saying, yep, it's cleared, 15:16:24</p> <p>5 you can take vacation. 15:16:27</p> <p>6 Q. Were there any discussions at that meeting 15:16:31</p> <p>7 about offering you six months of severance? 15:16:33</p> <p>8 A. No. 15:16:36</p> <p>9 Q. There weren't? 15:16:36</p> <p>10 A. No. 15:16:37</p> <p>11 Q. Did you propose to him paying you six 15:16:40</p> <p>12 months of severance? 15:16:43</p> <p>13 A. No. What I proposed he -- he thought was 15:16:45</p> <p>14 preposterous. 15:16:50</p> <p>15 Q. What did you propose? 15:16:52</p> <p>16 A. He said I'll give you two -- or we can give 15:16:53</p> <p>17 you two weeks' severance, and we had been talking 15:16:55</p> <p>18 about Sarbanes for some time, so I said I did some 15:16:59</p> <p>19 research and the average Sarbanes settlement in that 15:17:03</p> <p>20 year was something like \$700,000, and I said, I'll 15:17:13</p> <p>21 give Smith &amp; Wesson a hometown discount, so I wanted 15:17:18</p> <p>22 \$400,000. 15:17:27</p> <p>23 He kind of laughed, said I'll talk to my boss 15:17:27</p> <p>24 about it. And then he later called me while I was on 15:17:30</p> <p>25 vacation. I was actually en route from Connecticut to 15:17:35</p>	<p>1 your concerns about Pioneer, right? 15:19:02</p> <p>2 A. We had mutual concerns. He had told me 15:19:06</p> <p>3 about a -- an email he had sent prior. And Ron was a 15:19:10</p> <p>4 person that, whether you like him or not, he was 100 15:19:16</p> <p>5 percent all about what's good for Smith &amp; Wesson. 15:19:20</p> <p>6 So there were a number of ideas that benefitted 15:19:23</p> <p>7 me that came from Ron O'Brien. When I left, we were 15:19:27</p> <p>8 working on a program that would save Smith &amp; Wesson 15:19:33</p> <p>9 nearly \$10 million a year. Dan Fontaine thought it 15:19:37</p> <p>10 had enough merit. He had me meet with Steve Winewski 15:19:43</p> <p>11 and set up a panel where we would discuss these 15:19:47</p> <p>12 issues. That whole entire idea was a Ron O'Brien 15:19:50</p> <p>13 idea. 15:19:53</p> <p>14 Q. And now -- and you and Mr. O'Brien talked 15:19:54</p> <p>15 about the types of claims that you could potentially 15:20:00</p> <p>16 assert against Smith &amp; Wesson, right? 15:20:02</p> <p>17 A. No. 15:20:06</p> <p>18 Q. Did you text with him about the potential 15:20:07</p> <p>19 claims that you could assert against Smith &amp; Wesson? 15:20:10</p> <p>20 A. We texted and we didn't talk about 15:20:12</p> <p>21 things -- I may or may not have -- not to my 15:20:16</p> <p>22 recollection, but I may have mentioned some things, 15:20:20</p> <p>23 but the issue with Ron was he was about doing the 15:20:22</p> <p>24 right thing for the company. He was a company man all 15:20:28</p> <p>25 the way and to this day still is. 15:20:30</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

47 (Pages 182 to 185)

182	184
<p>1 But I -- I will -- as far as characterizing 15:20:34</p> <p>2 what we discussed, I'll talk specifically about things 15:20:41</p> <p>3 but I don't know generalities, how you could 15:20:49</p> <p>4 generalize about the things we talked about. 15:20:53</p> <p>5 Q. Did the two of you discuss or communicate 15:20:55</p> <p>6 about a potential Age Discrimination Employment Act, 15:20:59</p> <p>7 ADEA? 15:21:06</p> <p>8 A. Not that I recall. 15:21:06</p> <p>9 Q. Did the two of you discuss a potential 15:21:08</p> <p>10 False Claims Act claim against the company? 15:21:11</p> <p>11 A. Not that I'm aware of. 15:21:16</p> <p>12 Q. And did the two of you share information 15:21:18</p> <p>13 about Sarbanes-Oxley -- potential Sarbanes-Oxley 15:21:20</p> <p>14 claims against the company? 15:21:25</p> <p>15 A. We had talked about different areas, yes, 15:21:26</p> <p>16 that relate to vendors not -- vendors that are getting 15:21:31</p> <p>17 contracts not based on what's best for the company but 15:21:42</p> <p>18 based on some outside influence, yes. 15:21:47</p> <p>19 Q. For how long did you take vacation leave 15:21:50</p> <p>20 after your conversation with Mr. Cicero? 15:21:57</p> <p>21 A. Seven years ago, I really don't recall. I 15:21:59</p> <p>22 know we went back to Ohio, but how long it took place 15:22:04</p> <p>23 I can't recall. 15:22:07</p> <p>24 Q. And at some point you returned; isn't that 15:22:09</p> <p>25 right? 15:22:12</p>	<p>1 discussed it in the last meeting with Mr. Cicero. 15:23:59</p> <p>2 But when he said, hey, if we can't work this 15:24:02</p> <p>3 out, you're going to have to come back to work, so I 15:24:05</p> <p>4 just came back to work. But I think he made it almost 15:24:07</p> <p>5 as if a threat, like you wouldn't want this to happen, 15:24:11</p> <p>6 and like he had already moved on from that page or 15:24:14</p> <p>7 something. 15:24:17</p> <p>8 And so after I got back, I think it -- it 15:24:17</p> <p>9 surprised him that I would go back to work in that 15:24:22</p> <p>10 situation. And after a couple days he approached me 15:24:25</p> <p>11 about going on paid leave -- well, he don't approach 15:24:30</p> <p>12 me. It was a mandate. He wanted me to go on paid 15:24:35</p> <p>13 leave, but he said it was for my protection. 15:24:38</p> <p>14 Q. And when did that conversation with 15:24:42</p> <p>15 Mr. Cicero take place about your paid administrative 15:24:45</p> <p>16 leave? 15:24:49</p> <p>17 A. Without having the emails in front of me, I 15:24:50</p> <p>18 couldn't tell you exactly, but what you said it being 15:24:52</p> <p>19 within a few days after coming back, sounds about 15:24:57</p> <p>20 right, but I can't tell you for certain. 15:24:59</p> <p>21 Q. And where did this conversation with 15:25:01</p> <p>22 Mr. Cicero take place about administrative leave? 15:25:03</p> <p>23 A. On the phone. I was in my office, and I 15:25:07</p> <p>24 got a call from Mr. Cicero, and he -- he mentioned 15:25:10</p> <p>25 that you're being put on paid leave for your own 15:25:15</p>
183	185
<p>1 A. Yes. 15:22:12</p> <p>2 Q. And when you returned, you returned to 15:22:13</p> <p>3 work, correct? 15:22:18</p> <p>4 A. Yes, mm-hmm. 15:22:19</p> <p>5 Q. And you were back at work for maybe a 15:22:20</p> <p>6 couple of days; is that correct? 15:22:23</p> <p>7 A. Sure. I know I came back to work. I know 15:22:26</p> <p>8 that there was a communication to me by Mr. Cicero 15:22:29</p> <p>9 wanting to know where we were at with the separation 15:22:36</p> <p>10 agreement and what was palatable and what was not. 15:22:41</p> <p>11 And at one point he said, well, if -- if we 15:22:46</p> <p>12 can't come to agreement, you'll have to come back to 15:22:52</p> <p>13 work, which made it look as if he looked at that as -- 15:22:54</p> <p>14 it seemed almost like -- I don't know what he was 15:23:03</p> <p>15 thinking. It just showed -- so, yeah, so from day one 15:23:06</p> <p>16 I was, as I told Mr. Debney in my letter to him, that 15:23:14</p> <p>17 my goal is -- has nothing to do with my personal 15:23:20</p> <p>18 thing. I wanted this to be corrected for the company 15:23:25</p> <p>19 and for me to go back to my work. 15:23:29</p> <p>20 And now that they had poisoned the well by 15:23:32</p> <p>21 telling Larry, I told him I'd let the whole thing go 15:23:34</p> <p>22 away from my behalf, if they would just take care of 15:23:39</p> <p>23 the issues so that the board members were not being 15:23:42</p> <p>24 cheated and that I wasn't working under Larry and we'd 15:23:50</p> <p>25 be fine. So it wasn't about a personal issue. And we 15:23:54</p>	<p>1 safety effective immediately. And I gathered up a few 15:25:20</p> <p>2 things that were in my -- that was in my office -- my 15:25:28</p> <p>3 briefcase, my immediate effects -- and he said he 15:25:30</p> <p>4 didn't want it to appear like I was being fired or 15:25:34</p> <p>5 whatever, so not to make a scene. 15:25:37</p> <p>6 So I didn't want to carry too much out of my 15:25:41</p> <p>7 office and have my guys upset, because it's all about 15:25:43</p> <p>8 making sure that my department functioned after I 15:25:48</p> <p>9 left. You know, don't make a big scene out of the 15:25:50</p> <p>10 thing. 15:25:55</p> <p>11 So I took my -- a few of my things that were -- 15:25:56</p> <p>12 that wouldn't make it look conspicuous, and I went out 15:26:02</p> <p>13 the back way, went home, and that was it. 15:26:06</p> <p>14 Q. And do you recall anything else that 15:26:09</p> <p>15 Mr. Cicero said during that telephone conversation? 15:26:10</p> <p>16 A. No. I mean, it was pretty short and sweet 15:26:15</p> <p>17 that, you know, he -- that I was being put on paid 15:26:19</p> <p>18 administrative leave for my -- my benefit or for my 15:26:26</p> <p>19 safety, I believe he said, and so ... 15:26:30</p> <p>20 Q. And you were on -- given administrative 15:26:31</p> <p>21 leave from July until September 23rd or 24th, right? 15:26:35</p> <p>22 A. That's correct. 15:26:39</p> <p>23 Q. And let me have you turn to Exhibit 17. 15:26:40</p> <p>24 (Exhibit 17 previously marked 15:26:44</p> <p>25 for identification and referenced</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

48 (Pages 186 to 189)

	186		188
1	herein: Email with attached letter		15:29:03
2	dated 9/23/2014 to Earl Baker from		15:29:08
3	Anne Bruce		15:29:12
4	Baker0000535 - Baker0000536)	15:26:44	15:29:14
5	Q. Which is a September 23, 2014 email from	15:26:44	15:29:16
6	Ms. Bruce to you.	15:26:49	15:29:16
7	<b>A. Yes.</b>	15:26:50	15:29:21
8	Q. And is this the termination notice that you	15:26:52	15:29:23
9	received from Ms. Bruce?	15:26:55	15:29:25
10	<b>A. No, I don't believe it is.</b>	15:26:57	15:29:27
11	MR. LEE: Which one are we on, Connie?	15:26:59	15:29:28
12	MS. BERTRAM: I'm on Exhibit 17.	15:27:03	15:29:29
13	MR. LEE: Okay.	15:27:05	15:29:31
14	<b>A. I don't believe that's the right one. At</b>	15:27:07	15:29:33
15	<b>least in my -- my recollection, the -- the termination</b>	15:27:10	15:29:37
16	<b>letter that I got from her went into a longer</b>	15:27:14	15:29:39
17	<b>explanation and it culminated in my termination.</b>	15:27:20	15:29:39
18	Q. So this -- this document came from your	15:27:27	15:29:41
19	production. It's Baker 536 down in the lower	15:27:29	15:29:45
20	right-hand corner.	15:27:34	15:29:45
21	<b>A. Mm-hmm.</b>	15:27:35	15:29:46
22	Q. Do you deny that you received Exhibit 17?	15:27:36	15:29:48
23	<b>A. Yeah, I -- no, I don't deny that I received</b>	15:27:39	15:29:50
24	<b>it, but I -- I believe that the termination came</b>	15:27:41	15:29:52
25	<b>with -- came to me in email form, but it had a letter</b>	15:27:50	15:29:53

	187		189
1	voicing her rationale for my termination.	15:27:53	15:29:55
2	<b>So this may be a page that went with it, but,</b>	15:27:59	15:29:58
3	<b>if that's the case, it's just one -- one of two,</b>	15:28:04	15:30:05
4	<b>so ...</b>	15:28:09	15:30:09
5	Q. It's true that you don't know who drafted	15:28:10	15:30:12
6	Exhibit 17, right?	15:28:12	15:30:16
7	<b>A. No, I have no idea. Well, I would say it</b>	15:28:14	15:30:19
8	<b>was probably Anne Bruce. It came from Anne Bruce's</b>	15:28:19	15:30:21
9	<b>email, so I would say that she did.</b>	15:28:22	15:30:23
10	MR. LEE: Are we talking about the first	15:28:25	15:30:25
11	page of Exhibit 17 only?	15:28:27	15:30:29
12	MS. BERTRAM: No, I'm talking about the	15:28:29	15:30:32
13	second page, the termination letter dated September	15:28:31	15:30:35
14	23.	15:28:34	15:30:38
15	MR. LEE: Oh, okay.	15:28:34	15:30:43
16	<b>A. The one I'm looking at says, "Enclosed</b>	15:28:35	15:30:46
17	<b>you'll find a notice of termination separating your</b>	15:28:39	15:30:49
18	<b>employment," so that --</b>	15:28:42	15:30:51
19	Q. I'm talking about the letter that's on the	15:28:43	15:30:54
20	second page of Exhibit 17.	15:28:45	15:30:58
21	<b>A. Oh, yes. Okay. I was on the other one. I</b>	15:28:46	15:31:02
22	<b>was on Bates 535. So I didn't think that was the</b>	15:28:51	15:31:08
23	<b>termination letter. 536 is the termination letter</b>	15:28:54	15:31:13
24	<b>that I was referring to.</b>	15:28:58	15:31:19
25	Q. Okay. And -- and you don't know who	15:29:01	15:31:22

1	drafted the termination letter on page 536, right?	15:29:03
2	<b>A. It's got her signature on it.</b>	15:29:08
3	Q. Right, but you -- you don't have personal	15:29:12
4	knowledge as to who drafted it.	15:29:14
5	<b>A. No.</b>	15:29:16
6	Q. And you don't know who provided any input	15:29:16
7	in the letter or who reviewed it, right?	15:29:21
8	<b>A. No.</b>	15:29:23
9	Q. And you don't know when she started	15:29:25
10	drafting the termination letter, right?	15:29:27
11	<b>A. No.</b>	15:29:28
12	Q. And you would agree that you were not	15:29:29
13	involved in Smith & Wesson's decision to terminate	15:29:31
14	your employment.	15:29:33
15	<b>A. When you say I was not involved, what do</b>	15:29:37
16	<b>you mean?</b>	15:29:39
17	Q. You didn't -- you didn't participate in the	15:29:39
18	decision. You weren't ...[network interruption]...	15:29:41
19	termination, right?	15:29:45
20	<b>A. No.</b>	15:29:45
21	Q. And you don't know who made the decision to	15:29:46
22	terminate you, right?	15:29:48
23	<b>A. Now or then?</b>	15:29:50
24	Q. Then you did not, right?	15:29:52
25	<b>A. No.</b>	15:29:53

1	Q. And you don't know who else was involved in	15:29:55
2	the decision to terminate your employment, right?	15:29:58
3	<b>A. I knew people who were involved, yes.</b>	15:30:05
4	Q. But do you have personal knowledge that	15:30:09
5	they were involved, either because you saw them, heard	15:30:12
6	them, or they told you?	15:30:16
7	<b>A. No.</b>	15:30:19
8	Q. So who do you know was involved in the	15:30:21
9	decision?	15:30:23
10	<b>A. Well, I would say that -- that</b>	15:30:25
11	<b>Mr. Flatley's false reviews would make him involved,</b>	15:30:29
12	<b>because it was on the basis of those that I was let</b>	15:30:32
13	<b>go. So in -- in your estimation he may not be</b>	15:30:35
14	<b>involved in this letter or the ultimate decision, but</b>	15:30:38
15	<b>in a way he's involved because he wrote false things</b>	15:30:43
16	<b>about me.</b>	15:30:46
17	Q. So that's -- that's your presumption based	15:30:49
18	on the fact that you received the evaluations, right?	15:30:51
19	<b>A. No. Ms. Bruce mentions in this letter what</b>	15:30:54
20	<b>it was based on, and if those -- she mentions things</b>	15:30:58
21	<b>in there, talking about my submissions as well, that</b>	15:31:02
22	<b>she has based my termination in part on my submissions</b>	15:31:08
23	<b>and in part on those reviews based on, which I've told</b>	15:31:13
24	<b>you, are based on false information that I wasn't able</b>	15:31:19
25	<b>to attain. So that makes Flatley a part of that</b>	15:31:22

Baker, Earl Donald

August 14, 2020

49 (Pages 190 to 193)

190	192
<p>1 termination, because he was the one that provided 15:31:26</p> <p>2 those false reviews. 15:31:28</p> <p>3 Q. Do you know if anybody else was involved in 15:31:30</p> <p>4 this decision? 15:31:33</p> <p>5 A. Well, I think Dan Fontaine is involved 15:31:34</p> <p>6 because he was -- he was at that last review meeting, 15:31:36</p> <p>7 and he affirmed that review even though he didn't look 15:31:40</p> <p>8 at the details of the falsehoods. 15:31:43</p> <p>9 So there's an old saying that only -- only a 15:31:46</p> <p>10 fool proceeds without knowing all the details. And I 15:31:52</p> <p>11 feel like they proceeded without either knowing the 15:31:56</p> <p>12 details or caring what they were, and that -- that 15:31:59</p> <p>13 tells me that it was pretense to go through that 15:32:02</p> <p>14 review process if they had already determined what 15:32:06</p> <p>15 they were going to do. They don't want to look at the 15:32:09</p> <p>16 evidence to show that what they were purporting as 15:32:12</p> <p>17 being true was false, then it's either pretext or 15:32:15</p> <p>18 they're foolish. Which is it? 15:32:20</p> <p>19 Q. And do you know if anybody else was 15:32:23</p> <p>20 involved in the decision? 15:32:25</p> <p>21 A. Everyone who was above me was involved in 15:32:29</p> <p>22 that decision in some manner, because you either stand 15:32:32</p> <p>23 up and say, this isn't right, or you let it occur, and 15:32:35</p> <p>24 then they're involved. 15:32:39</p> <p>25 So in my mind they're involved because they 15:32:41</p>	<p>1 Mr. Debney was involved in the decision? 15:34:24</p> <p>2 A. Yes, absolutely. 15:34:26</p> <p>3 Q. Does he know -- do you know if he even knew 15:34:28</p> <p>4 that you were being terminated? 15:34:30</p> <p>5 A. I know that he was apprised of the 15:34:31</p> <p>6 situation. That's exactly why I sent him the email. 15:34:34</p> <p>7 I didn't want him to say, well, gee, no one ever told 15:34:37</p> <p>8 me about what was going on. 15:34:40</p> <p>9 So I felt like I exhausted all of my resources 15:34:42</p> <p>10 with the people that -- that I had dealt with up to 15:34:45</p> <p>11 that point, and they didn't have the backbone to stand 15:34:51</p> <p>12 up for what's right. And so if it was going to go 15:34:53</p> <p>13 down, it wasn't going to go down without him not 15:34:56</p> <p>14 having any knowledge of it. 15:35:00</p> <p>15 So that's why I sent him the emails, so that he 15:35:01</p> <p>16 had no deniability saying, gee, I didn't know this 15:35:04</p> <p>17 happened to Earl, had I known I would have said 15:35:07</p> <p>18 something. 15:35:09</p> <p>19 So I was -- a last ditch effort to say, listen, 15:35:10</p> <p>20 if you want to stand up for what's right, Mr. Debney, 15:35:13</p> <p>21 this is what's happening, I'm not trying to convince 15:35:16</p> <p>22 you it happened, I'm just telling you for a fact, this 15:35:18</p> <p>23 happened because I was there and I saw it, I witnessed 15:35:22</p> <p>24 it, he said these things, these things happened. Now 15:35:24</p> <p>25 it's up to you to act or let it happen. And so 15:35:28</p>
191	193
<p>1 didn't stand up for me. And HR's job is to make sure 15:32:43</p> <p>2 that every person is handled and -- and -- and treated 15:32:48</p> <p>3 with the same actions or -- how would I want to say -- 15:32:52</p> <p>4 with the same treatment that the company policy 15:33:03</p> <p>5 dictates, and they did not do that. 15:33:07</p> <p>6 And so HR is involved by not -- not keeping the 15:33:10</p> <p>7 company code of ethics and by not keeping the 15:33:16</p> <p>8 company's system of -- of discipline and by subverting 15:33:22</p> <p>9 the whole process and having a different set of rules 15:33:26</p> <p>10 for me than what they had for other people. 15:33:28</p> <p>11 So, yes, they're involved. So other people 15:33:32</p> <p>12 were involved. And if -- if all it takes is for -- 15:33:35</p> <p>13 I'm not saying that evil took place -- I'm saying the 15:33:40</p> <p>14 quote is, there's a quote, I think it's by a man in 15:33:43</p> <p>15 the 900s that said, all it takes for evil to exist is 15:33:51</p> <p>16 for good men to do nothing. So if there were people 15:33:54</p> <p>17 that did not do their job in this process, yes, 15:33:56</p> <p>18 they're involved in my firing. 15:33:59</p> <p>19 Q. And you said everyone above you, correct? 15:34:02</p> <p>20 A. Well, everyone above me that did not -- 15:34:05</p> <p>21 that's what their job is, is to have input on -- on my 15:34:09</p> <p>22 continued employment. And so if they did not stand up 15:34:12</p> <p>23 and they did not follow company policy, yeah, they're 15:34:15</p> <p>24 involved. 15:34:20</p> <p>25 Q. And so it would be your position that 15:34:20</p>	<p>1 Mr. Debney was involved in this decision, if nothing 15:35:35</p> <p>2 else, by his complicity. 15:35:40</p> <p>3 Q. Back to my question. Do you know that he 15:35:43</p> <p>4 knew that you were terminated or a decision had been 15:35:46</p> <p>5 made to terminate you? 15:35:49</p> <p>6 A. I think at some point, yes, he knows. He 15:35:53</p> <p>7 has to -- he has to replace my position, so at some 15:35:56</p> <p>8 point he knows that I'm gone. 15:36:00</p> <p>9 And to your point, you're trying to make some 15:36:02</p> <p>10 decision about when he knew, what -- I'm not getting 15:36:04</p> <p>11 your distinction. But he's the CEO. He's responsible 15:36:08</p> <p>12 for what happens under him. I brought the -- the 15:36:11</p> <p>13 attention -- all these issues to his attention. 15:36:14</p> <p>14 So he's involved. He's responsible. So just 15:36:18</p> <p>15 like when things come to my view and I do nothing, I'm 15:36:21</p> <p>16 partially responsible either by complicity or by 15:36:26</p> <p>17 action. And so, yes, everyone above me was involved 15:36:29</p> <p>18 in my termination. 15:36:34</p> <p>19 MR. LEE: Connie, it's 3:37 my time. How 15:36:37</p> <p>20 about a quick break? I don't know how much more you 15:36:44</p> <p>21 have left, but can we take a quick break? 15:36:46</p> <p>22 MS. BERTRAM: Yeah, that's fine. 15:36:51</p> <p>23 VIDEO SPECIALIST: The time is 3:37 p.m. 15:36:53</p> <p>24 We're off the record. 15:36:57</p> <p>25 (Proceedings recessed) 15:36:58</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

50 (Pages 194 to 197)

194	196
<p>1 VIDEO SPECIALIST: The time is 3:46 p.m., 15:46:14</p> <p>2 and we're back on the record. 15:46:19</p> <p>3 MS. BERTRAM: Could you please read back</p> <p>4 the last question and response, unless the response is</p> <p>5 very long? Maybe the last question.</p> <p>6 MR. LEE: Just the last question. 15:46:52</p> <p>7 (The record was read by the reporter.) 15:46:52</p> <p>8 BY MS. BERTRAM:</p> <p>9 Q. You don't know when the company made the 15:46:52</p> <p>10 decision to terminate your employment, correct? 15:46:55</p> <p>11 <b>A. No.</b> 15:46:56</p> <p>12 Q. Did you give a response? I'm sorry. 15:46:58</p> <p>13 <b>A. No. I didn't know.</b> 15:47:01</p> <p>14 Q. And you don't know the information that the 15:47:02</p> <p>15 company considered in making the decision to terminate 15:47:06</p> <p>16 your employment, right? 15:47:08</p> <p>17 <b>A. She lists a few things in her termination</b> 15:47:10</p> <p>18 <b>letter, but, other than that, I don't know.</b> 15:47:13</p> <p>19 Q. Now as we proceed, I want to make certain 15:47:19</p> <p>20 that we understand some terminology so that we can go 15:47:22</p> <p>21 through some issues kind of based in different 15:47:28</p> <p>22 buckets. 15:47:33</p> <p>23 We talked about some HR issues, some concerns 15:47:34</p> <p>24 about HR issues that you've raised. We'll talk about 15:47:37</p> <p>25 them some more as well. 15:47:40</p>	<p>1 to Lindco, Pioneer, and MSC. All three of them were 15:49:17</p> <p>2 doing that practice. 15:49:23</p> <p>3 So I made an email to Larry saying that this 15:49:24</p> <p>4 was -- was bad things. I said I wasn't aware of how 15:49:29</p> <p>5 much it really -- how big the issue was, but was just 15:49:37</p> <p>6 letting him know that this is a practice that could 15:49:42</p> <p>7 lead to exorbitant charges and we're allowing them to 15:49:44</p> <p>8 take our cutters without ... 15:49:50</p> <p>9 So that one was not a Pioneer issue as much as 15:49:52</p> <p>10 it was all three of the vendors that were in that 15:49:55</p> <p>11 RoboCrib were doing that. 15:49:59</p> <p>12 Q. So -- so would it be fair to call those 15:50:01</p> <p>13 concerns vendor concerns without tying it to Pioneer? 15:50:08</p> <p>14 <b>A. Yes.</b> 15:50:12</p> <p>15 Q. Okay. And then would it also be fair to 15:50:12</p> <p>16 say that you had some security and safety concerns? 15:50:15</p> <p>17 <b>A. Safety and security for the company or for</b> 15:50:20</p> <p>18 <b>myself?</b> 15:50:23</p> <p>19 Q. In your discussions with Mr. Cicero and 15:50:23</p> <p>20 Mr. Suraci did you raise concerns that you -- you felt 15:50:27</p> <p>21 unsafe? 15:50:31</p> <p>22 <b>A. Mr. Suraci, in our conversations, there</b> 15:50:33</p> <p>23 <b>were a number of times towards the end, the pressure I</b> 15:50:42</p> <p>24 <b>was under, where I got emotional, which is not my</b> 15:50:45</p> <p>25 <b>nature, and he asked me -- he mentioned that he</b> 15:50:52</p>
195	197
<p>1 For concerns where you felt that you were 15:47:43</p> <p>2 mistreated or not treated fairly, would you be 15:47:46</p> <p>3 comfortable calling those the HR concerns? 15:47:51</p> <p>4 <b>A. For the purposes of this talk, that would</b> 15:47:54</p> <p>5 <b>be fine, but if I feel that those HR concerns were</b> 15:47:57</p> <p>6 <b>predicated by vendor-related concerns, then as long as</b> 15:48:04</p> <p>7 <b>you make the distinction that they're interrelated,</b> 15:48:10</p> <p>8 <b>but just for the purposes of knowing which things</b> 15:48:17</p> <p>9 <b>we're talking about, you can label it whatever you</b> 15:48:20</p> <p>10 <b>like.</b> 15:48:23</p> <p>11 Q. Okay. And we have another bucket, which is 15:48:23</p> <p>12 allegations of inappropriate conduct with respect to 15:48:27</p> <p>13 vendors, right? 15:48:30</p> <p>14 <b>A. Yes.</b> 15:48:31</p> <p>15 Q. And those concerns center on a particular 15:48:32</p> <p>16 vendor that's Pioneer Tool, right? 15:48:36</p> <p>17 <b>A. I think they were the biggest offender, but</b> 15:48:38</p> <p>18 <b>I point to an email I made to Larry where vendors were</b> 15:48:46</p> <p>19 <b>taking -- they were all taking tools that</b> 15:48:52</p> <p>20 <b>Smith &amp; Wesson purchased. After they were vended out</b> 15:48:55</p> <p>21 <b>and they were dull, instead of going back to my</b> 15:49:01</p> <p>22 <b>department to sharpen, the vendors were permitted to</b> 15:49:04</p> <p>23 <b>take those back out of the shop themselves, so no</b> 15:49:07</p> <p>24 <b>accounting was made for those and they were able to</b> 15:49:10</p> <p>25 <b>resell them over and over again. That issue pertained</b> 15:49:13</p>	<p>1 thought maybe I had PTSD. I think he had a military 15:51:00</p> <p>2 background. I don't know anything about, you know, 15:51:04</p> <p>3 the symptoms of that. 15:51:10</p> <p>4 But he asked me at that point, because I had 15:51:13</p> <p>5 gotten emotional, I just got choked up, if I felt in 15:51:17</p> <p>6 danger, and I said yes. I even mentioned it to, I 15:51:25</p> <p>7 think, Anne Bruce in an email that, by letting 15:51:33</p> <p>8 Mr. Flatley know of my submissions, that she would put 15:51:39</p> <p>9 me in danger. 15:51:42</p> <p>10 So yes, I get what you're saying. That 15:51:45</p> <p>11 category would be safety issues. 15:51:52</p> <p>12 Q. Okay. So there's three buckets, then -- 15:51:55</p> <p>13 vendor concerns, HR concerns, and safety concerns. Is 15:52:00</p> <p>14 that fair? 15:52:03</p> <p>15 <b>A. Yes.</b> 15:52:04</p> <p>16 Q. And while you were working for the company, 15:52:04</p> <p>17 did you collect evidence relating to those concerns? 15:52:08</p> <p>18 <b>A. I collected -- I collected documents</b> 15:52:12</p> <p>19 <b>because there was a point where my computer had been</b> 15:52:22</p> <p>20 <b>compromised and documents were deleted. If it were</b> 15:52:27</p> <p>21 <b>not for a -- just a coincidental circumstance, that</b> 15:52:32</p> <p>22 <b>that computer had been -- basically, it just died, and</b> 15:52:42</p> <p>23 <b>so IT gave me another computer, but backed up</b> 15:52:47</p> <p>24 <b>everything that was on the hard drive and put it in a</b> 15:52:52</p> <p>25 <b>file on that hard drive.</b> 15:52:56</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

51 (Pages 198 to 201)

198	200
<p>1 After my office had been broken into, it was 15:52:58</p> <p>2 made aware that -- or I found -- Mr. Suraci asked for 15:53:01</p> <p>3 me to send him emails that corroborate the things that 15:53:05</p> <p>4 I told him. So when I looked for a number of them, 15:53:10</p> <p>5 they weren't there. And I knew that they existed, and 15:53:13</p> <p>6 it took some time before I realized that they were on 15:53:17</p> <p>7 that backup. So I emailed him which ones had been 15:53:21</p> <p>8 deleted. 15:53:26</p> <p>9 And so from that point on, any interaction I 15:53:29</p> <p>10 had with Mr. Cicero and Mr. Suraci, I would tell them 15:53:32</p> <p>11 I'm deleting this email and then I would delete it 15:53:37</p> <p>12 just because, if Mr. Flatley broke into my office and 15:53:40</p> <p>13 found that email, he would know I was informing on 15:53:43</p> <p>14 him, and that would be a scorched earth policy. 15:53:46</p> <p>15 So I was protecting the documents for 15:53:51</p> <p>16 Smith &amp; Wesson's sake, but by saying it's evidence, 15:53:55</p> <p>17 that makes it sound like it was all predicated on some 15:54:01</p> <p>18 legal proceeding for my part. Up to the day I left, I 15:54:07</p> <p>19 was still offering them -- I even told Anne Bruce, I'm 15:54:15</p> <p>20 willing to forget all this and come back to work, and 15:54:20</p> <p>21 she seemed amiable to that. 15:54:23</p> <p>22 So, again, I just want to stress that this was 15:54:27</p> <p>23 not evidence from a standpoint that I'm looking to sue 15:54:31</p> <p>24 somebody or whatever. It was just a way to protect 15:54:38</p> <p>25 those documents because, again, in that LRN it said 15:54:43</p>	<p>1 Q. I think you're reading way too much into my 15:56:14</p> <p>2 question, so let me -- let me go at this in a 15:56:17</p> <p>3 different approach. You produced documents in the 15:56:20</p> <p>4 OSHA proceeding, correct? 15:56:23</p> <p>5 A. Yes. 15:56:24</p> <p>6 Q. And you also produced -- made some 15:56:25</p> <p>7 supplemental productions in this case, correct? 15:56:28</p> <p>8 A. Yes. 15:56:30</p> <p>9 Q. And in those productions there were emails 15:56:30</p> <p>10 and also vendor documentation and other documents 15:56:38</p> <p>11 related to your work for Smith &amp; Wesson, correct? 15:56:42</p> <p>12 A. Yes. 15:56:45</p> <p>13 Q. And how did you get those? How did you 15:56:46</p> <p>14 obtain copies of them? 15:56:50</p> <p>15 A. Some, like you said, I forwarded to my 15:56:52</p> <p>16 wife. Others I had in my briefcase. And I may have 15:56:56</p> <p>17 been carrying those home because I didn't want them to 15:57:05</p> <p>18 disappear. But when I was told, you're being placed 15:57:08</p> <p>19 on leave and you're to leave the -- I wasn't even 15:57:11</p> <p>20 allowed to finish the day out, just pick up your stuff 15:57:16</p> <p>21 and leave -- some of those documents were in my 15:57:19</p> <p>22 possession in that briefcase when I left. 15:57:22</p> <p>23 It wasn't forethought in taking them. It was 15:57:25</p> <p>24 just I didn't want to leave them in that office if my 15:57:28</p> <p>25 office was being broken into. They had purchased a 15:57:31</p>
199	201
<p>1 that there was an up to 20-year jail penalty for 15:54:48</p> <p>2 destroying evidence in a Sarbanes case. So I was 15:54:52</p> <p>3 protecting the company interests by making sure I had 15:54:55</p> <p>4 duplicate copies of those emails. 15:55:00</p> <p>5 Q. And you said that you, with notice to Ed 15:55:03</p> <p>6 Suraci and/or Rob Cicero, told them you were deleting 15:55:09</p> <p>7 emails. 15:55:17</p> <p>8 A. Yes. 15:55:17</p> <p>9 Q. But you forwarded those to your home email 15:55:18</p> <p>10 before you deleted them, right? 15:55:21</p> <p>11 A. Yes. 15:55:22</p> <p>12 Q. So you retained certain -- you retained a 15:55:23</p> <p>13 copy and that they couldn't be located on your 15:55:25</p> <p>14 computer; is that right? 15:55:28</p> <p>15 A. Again, if I was doing it for my purposes, 15:55:29</p> <p>16 why would I tell Mr. Suraci and Mr. Cicero that I was 15:55:32</p> <p>17 doing so? I can't be doing it against their interest 15:55:35</p> <p>18 if -- if I'm telling them that I'm doing so. 15:55:40</p> <p>19 So I was letting them know, being up front, 15:55:42</p> <p>20 aboveboard, and saying emails where I'm disclosing 15:55:46</p> <p>21 that I'm the guy whistleblowing and that I don't want 15:55:50</p> <p>22 Mr. Fontaine -- or Mr. Flatley to know, I'm letting 15:55:55</p> <p>23 you know I'm deleting this email. But that's 15:56:02</p> <p>24 different than the emails that were deleted off the 15:56:05</p> <p>25 mainframe from a long time ago. 15:56:08</p>	<p>1 motion-activated clock radio for my desk but never 15:57:36</p> <p>2 installed it until after I left, even though they -- 15:57:41</p> <p>3 they showed me how to use it, they never installed it. 15:57:45</p> <p>4 So I felt that office was compromised, so I 15:57:49</p> <p>5 didn't leave certain documents that I didn't want to 15:57:53</p> <p>6 disappear until after they secured that office. And 15:57:56</p> <p>7 so I had them in my briefcase, and when they told me 15:58:02</p> <p>8 to go home, they came with me. 15:58:05</p> <p>9 Q. And when did you first start emailing 15:58:07</p> <p>10 documents to yourself and removing paper copies of 15:58:11</p> <p>11 documents? 15:58:15</p> <p>12 A. I couldn't tell you the time, but they were 15:58:16</p> <p>13 aware of it. They could see, you know, I told them in 15:58:19</p> <p>14 email and anything that I forwarded from my 15:58:25</p> <p>15 Smith &amp; Wesson server, they had -- they were aware of 15:58:28</p> <p>16 it. And they even were aware when I talked to people 15:58:33</p> <p>17 within the company. 15:58:39</p> <p>18 So there wasn't things done in secret. I had 15:58:41</p> <p>19 talked to Kelly Rathman a few times, and they called 15:58:46</p> <p>20 her in the office the next day, those type of things. 15:58:50</p> <p>21 So there wasn't -- there wasn't anything clandestine 15:58:54</p> <p>22 in what I was doing. I told them I'm emailing them 15:59:00</p> <p>23 but I'm trying to protect the documents. 15:59:05</p> <p>24 Q. Is it fair to say that you retained and/or 15:59:07</p> <p>25 emailed to yourself all of the evidence that you 15:59:12</p>



Baker, Earl Donald

August 14, 2020

52 (Pages 202 to 205)

202	204
<p>1 thought was relevant to the three different categories 15:59:15</p> <p>2 of claims we've talked about? 15:59:20</p> <p>3 <b>A. No.</b> 15:59:21</p> <p>4 Q. Security -- 15:59:21</p> <p>5 <b>A. Not even close.</b> 15:59:23</p> <p>6 Q. Let me -- let me finish the question. 15:59:24</p> <p>7 <b>A. Okay. Sorry.</b> 15:59:26</p> <p>8 Q. Is it fair to say that, by the time you 15:59:26</p> <p>9 left the company, that you retained or forwarded to 15:59:32</p> <p>10 your home email address or personal email address all 15:59:34</p> <p>11 of the evidence that you considered to be relevant to 15:59:38</p> <p>12 your claims? 15:59:40</p> <p>13 <b>A. No.</b> 15:59:41</p> <p>14 Q. What portion of the evidence did you retain 15:59:44</p> <p>15 or forward to your personal email? 15:59:49</p> <p>16 MR. LEE: Objection to the form of the 15:59:52</p> <p>17 question, but you may answer. 15:59:53</p> <p>18 <b>A. In my estimation maybe 5 or 10 percent of</b> 15:59:55</p> <p>19 <b>what I needed. I didn't -- I didn't foresee this</b> 15:59:59</p> <p>20 <b>ending in a -- in the negative fashion it did. I was</b> 16:00:03</p> <p>21 <b>even told by Mr. Suraci that I want you to know you're</b> 16:00:10</p> <p>22 <b>doing a service to the company, and I commend you for</b> 16:00:14</p> <p>23 <b>what you're doing, and this -- this is not going to go</b> 16:00:17</p> <p>24 <b>badly with you.</b> 16:00:20</p> <p>25 <b>So my every expectation was that it wouldn't</b> 16:00:20</p>	<p>1 and that sat in my closet. The only time I ever 16:02:05</p> <p>2 referred to those was at the point that it became a 16:02:09</p> <p>3 legal situation. 16:02:12</p> <p>4 I was told by The Employment Law Group that 16:02:15</p> <p>5 anything that I had that was even a scrap of paper 16:02:18</p> <p>6 that I wrote down Smith &amp; Wesson on was considered 16:02:21</p> <p>7 evidence and that I was to forward it to them, and so 16:02:25</p> <p>8 I did so. 16:02:29</p> <p>9 Q. Why did you have the box of old invoices in 16:02:30</p> <p>10 your closet? 16:02:35</p> <p>11 <b>A. I had no other -- I had no other -- I just</b> 16:02:35</p> <p>12 <b>said that I thought anything that was destroyed that</b> 16:02:41</p> <p>13 <b>was evidence in a Sarbanes case was against the law</b> 16:02:44</p> <p>14 <b>and you could be imprisoned for it. It was in my</b> 16:02:48</p> <p>15 <b>briefcase when I was sent home. And I -- I know I</b> 16:02:51</p> <p>16 <b>can't get rid of it, but what do you do with it? So</b> 16:02:58</p> <p>17 <b>it just sat there.</b> 16:03:02</p> <p>18 <b>So I produced every document to you in</b> 16:03:04</p> <p>19 <b>discovery, and, again, to this day, now I have a huge</b> 16:03:06</p> <p>20 <b>bin full of documents in there that's part of</b> 16:03:13</p> <p>21 <b>discovery that I retained a copy of.</b> 16:03:17</p> <p>22 Q. So for the old invoices, it's your claim 16:03:20</p> <p>23 that they were in your briefcase the day that you were 16:03:25</p> <p>24 put on administrative leave ; is that right? 16:03:29</p> <p>25 <b>A. That's correct. And they had probably been</b> 16:03:31</p>
203	205
<p>1 end up in a termination. I knew that was against the 16:00:25</p> <p>2 law, and it wasn't even in my judgment at that point. 16:00:28</p> <p>3 I'm fairly naive in the fact that I try to believe the 16:00:33</p> <p>4 best in people, but I thought Mr. Cicero and 16:00:36</p> <p>5 Mr. Suraci and those that I was submitting things to 16:00:40</p> <p>6 were going to operate within the best interests of 16:00:46</p> <p>7 Smith &amp; Wesson, and, if they did so, there's no reason 16:00:49</p> <p>8 to -- that I would be separated. But I don't -- I 16:00:53</p> <p>9 think that I had some -- I was a bit naive in 16:00:59</p> <p>10 believing that they would do the right thing. So I 16:01:05</p> <p>11 didn't protect myself. I didn't gather nearly enough 16:01:08</p> <p>12 documents to protect myself. 16:01:12</p> <p>13 Q. But for the documents you did send to your 16:01:17</p> <p>14 personal email or take home, where did you keep the 16:01:20</p> <p>15 files, the documents with the data? 16:01:23</p> <p>16 <b>A. The ones that I -- I forwarded, they were</b> 16:01:29</p> <p>17 <b>within our email, so I didn't make printouts of it.</b> 16:01:33</p> <p>18 <b>There was a file that I had in my closet that was in</b> 16:01:38</p> <p>19 <b>a, like a Staples box where you get a ream of paper.</b> 16:01:44</p> <p>20 Q. Mm-hmm. 16:01:50</p> <p>21 <b>A. I had it in a folder that said "Old</b> 16:01:51</p> <p>22 <b>Invoices."</b> 16:01:54</p> <p>23 Q. That said what? I'm sorry. 16:01:55</p> <p>24 <b>A. "Old Invoices." And that was what was</b> 16:01:57</p> <p>25 <b>written on the manila file. I had them stuck in that</b> 16:02:00</p>	<p>1 in there for -- I don't even know -- I'd speculate 16:03:33</p> <p>2 maybe a month. 16:03:37</p> <p>3 Q. What's that -- 16:03:41</p> <p>4 <b>A. They had been in my briefcase for, I would</b> 16:03:42</p> <p>5 <b>guess, maybe as long as a month prior that, when my</b> 16:03:45</p> <p>6 <b>office was broken into, that file was in my office,</b> 16:03:47</p> <p>7 <b>and I did not -- from the time that my briefcase was</b> 16:03:52</p> <p>8 <b>gone through, I didn't leave my briefcase at the</b> 16:03:55</p> <p>9 <b>office. And if there were sensitive documents that</b> 16:03:58</p> <p>10 <b>I -- would prove that something underhanded was going</b> 16:04:03</p> <p>11 <b>on that could be used in a Sarbanes case, I didn't</b> 16:04:08</p> <p>12 <b>want to leave them there until they secured that</b> 16:04:12</p> <p>13 <b>office.</b> 16:04:14</p> <p>14 <b>So I put that in that file, and every night</b> 16:04:15</p> <p>15 <b>when I went home, that file that said "Old Invoices"</b> 16:04:18</p> <p>16 <b>was in my briefcase. And so when I went home, it went</b> 16:04:21</p> <p>17 <b>home with me. So the last day I was sent packing, I</b> 16:04:27</p> <p>18 <b>took that thing home.</b> 16:04:30</p> <p>19 <b>Now they didn't tell me that was my last day.</b> 16:04:32</p> <p>20 <b>They just said this is for your safety. So they even</b> 16:04:35</p> <p>21 <b>called the next day and said, well, people seem to</b> 16:04:38</p> <p>22 <b>think you're fired, and we want you to know you're not</b> 16:04:44</p> <p>23 <b>fired. And why would you give people that impression?</b> 16:04:47</p> <p>24 <b>So I had every inclination that I would return</b> 16:04:49</p> <p>25 <b>to work and those files would return with me. But it</b> 16:04:53</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

53 (Pages 206 to 209)

206	208
<p>1 was their choice while I was on administrative 16:04:58</p> <p>2 leave -- they never saw my face again. They just -- 16:05:01</p> <p>3 Q. You said that you didn't want to leave 16:05:05</p> <p>4 critical evidence in your office until it was secured. 16:05:08</p> <p>5 Why did you consider the old invoices to be critical 16:05:10</p> <p>6 evidence? 16:05:13</p> <p>7 A. Because there were -- there are evidences 16:05:15</p> <p>8 in there that -- of the things that Leo had discussed 16:05:20</p> <p>9 of vendors being able to get a sweet deal from 16:05:27</p> <p>10 Smith &amp; Wesson under the prior regime. And so the old 16:05:34</p> <p>11 invoices, there are a number of them in there, that 16:05:41</p> <p>12 said "no charge." 16:05:44</p> <p>13 Now can a company that's a publicly owned 16:05:48</p> <p>14 company -- who has the authority to say there's no 16:05:53</p> <p>15 charge for this? And that's -- so did I know they 16:05:57</p> <p>16 were evidence? No. I just thought they were possible 16:06:02</p> <p>17 evidence. 16:06:04</p> <p>18 But, again, at this point I felt like the 16:06:05</p> <p>19 people who were handling that investigation probably 16:06:07</p> <p>20 had gotten all they needed on their own. But if they 16:06:15</p> <p>21 need this evidence as part of that ongoing 16:06:18</p> <p>22 investigation, I wanted to make sure it was secure. 16:06:23</p> <p>23 And so that's why I -- that's why I had it in my 16:06:26</p> <p>24 briefcase. 16:06:30</p> <p>25 There isn't anything, as it turns out, I feel, 16:06:32</p>	<p>1 heard from -- I had told Mr. Cicero about the TVs, the 16:08:18</p> <p>2 account that I was given about the TVs, and about the 16:08:24</p> <p>3 baseball tickets, and yet I hadn't heard from those 16:08:28</p> <p>4 things. 16:08:32</p> <p>5 And, to me, those are far more smoking guns 16:08:33</p> <p>6 than some company that got tools reground for free, 16:08:36</p> <p>7 but if he needed some proof that some of these 16:08:41</p> <p>8 companies actually did get a sweet deal because of 16:08:45</p> <p>9 other things he found, then those might be important. 16:08:47</p> <p>10 Q. Did you ever tell Mr. Cicero that you had 16:08:55</p> <p>11 these old invoices? 16:08:58</p> <p>12 A. No, I didn't. And I -- I -- to be honest, 16:09:00</p> <p>13 didn't even -- at the time I left, I hadn't even 16:09:05</p> <p>14 thought about them. It was something I put in my 16:09:10</p> <p>15 briefcase at the time of a break-in. I threw stuff in 16:09:12</p> <p>16 that day into the briefcase that I could think of, and 16:09:16</p> <p>17 I kind of forgot I had them, to be honest. I was 16:09:21</p> <p>18 actually surprised that I had them. 16:09:25</p> <p>19 Q. And -- and all of those were original 16:09:27</p> <p>20 documents, right? 16:09:30</p> <p>21 A. I don't know that for a fact. Some of them 16:09:32</p> <p>22 looked like they were mimeographs but -- or, I mean, 16:09:38</p> <p>23 Xeroxes -- but it could have been that's how Stanley 16:09:42</p> <p>24 had stored them as a -- maybe he made a copy of an 16:09:45</p> <p>25 actual invoice, but I didn't make copies of them. 16:09:50</p>
207	209
<p>1 groundbreaking in there, but I didn't read through 16:06:35</p> <p>2 that whole thing. I just carried it around with me 16:06:41</p> <p>3 because I didn't want that to fall into anybody else's 16:06:44</p> <p>4 hands. I wanted it to be public record of who got a 16:06:46</p> <p>5 sweet deal and who got tools for free. And I -- I 16:06:50</p> <p>6 didn't think it was right to just leave it there. 16:06:53</p> <p>7 Q. Were there other items of critical evidence 16:06:56</p> <p>8 that you took from that office so that it wouldn't be 16:06:59</p> <p>9 destroyed or removed or taken from you? 16:07:04</p> <p>10 A. No, not really, none that I can think of. 16:07:06</p> <p>11 Q. Did you provide the old invoices, whether 16:07:08</p> <p>12 originals or copies, to Mr. Cicero in connection with 16:07:12</p> <p>13 his investigation? 16:07:15</p> <p>14 A. No. Well, he -- if he had required that -- 16:07:16</p> <p>15 if I had found something in there that I felt to be of 16:07:23</p> <p>16 a suspicious nature, I would have supplied it to him. 16:07:32</p> <p>17 Well, to be honest, I felt like the last few months I 16:07:35</p> <p>18 was dodging attack after attack from Mr. Flatley, and 16:07:41</p> <p>19 I really didn't have as much time to devote to the -- 16:07:46</p> <p>20 remember the three buckets -- I had so much going on 16:07:51</p> <p>21 in the HR bucket that I didn't give -- have as much 16:07:54</p> <p>22 time to think about what is in the Sarbanes bucket. 16:07:58</p> <p>23 So I -- my focus was over here, and I didn't 16:08:04</p> <p>24 really have time to research it there, you know. I 16:08:09</p> <p>25 felt like they had enough hard evidence that I hadn't 16:08:13</p>	<p>1 Those were actual -- some of them appeared to be 16:09:53</p> <p>2 copies of an original, but I didn't make the copy. 16:09:56</p> <p>3 Q. And we looked at some notes that you 16:10:00</p> <p>4 prepared while you were employed by Smith &amp; Wesson, 16:10:03</p> <p>5 right? 16:10:06</p> <p>6 MR. LEE: You mean at the deposition today? 16:10:08</p> <p>7 MS. BERTRAM: Yeah, at the deposition 16:10:10</p> <p>8 today. 16:10:11</p> <p>9 Q. We've been looking at some handwritten 16:10:12</p> <p>10 documents that you prepared while you were employed by 16:10:15</p> <p>11 the company, correct? 16:10:16</p> <p>12 A. Yes. 16:10:17</p> <p>13 Q. Did you also have something that you 16:10:17</p> <p>14 referred to as your "Rain Man" journal? 16:10:20</p> <p>15 MR. LEE: What journal? What was that? 16:10:26</p> <p>16 MS. BERTRAM: "Rain Man." 16:10:28</p> <p>17 MR. LEE: Did you say like Dustin Hoffman 16:10:32</p> <p>18 "Rain Man"? 16:10:36</p> <p>19 MS. BERTRAM: Yes. 16:10:37</p> <p>20 MR. LEE: Okay. 16:10:37</p> <p>21 A. It may have been something I said in jest, 16:10:37</p> <p>22 but that would be -- "Rain Man" would be referred to 16:10:40</p> <p>23 in the part of the book where he -- Dustin Hoffman has 16:10:44</p> <p>24 his neck grabbed in a restaurant and he said, February 16:10:50</p> <p>25 4th, grabbed and hurt and pulled my neck. 16:10:53</p>

Baker, Earl Donald

August 14, 2020

54 (Pages 210 to 213)

210	212
<p>1 So if I said that, it was in jest more or less 16:10:57</p> <p>2 referring to the fact that these were documented 16:11:01</p> <p>3 abuses by Larry that on this date he said such and so, 16:11:05</p> <p>4 on this date he did -- but it would relate to the HR 16:11:10</p> <p>5 bucket, the abuses, which I considered to be 16:11:14</p> <p>6 retaliation or harassment because of my whistleblower. 16:11:20</p> <p>7 Q. You had retained counsel by July of 2014, 16:11:28</p> <p>8 right? 16:11:32</p> <p>9 A. Yes. 16:11:32</p> <p>10 Q. And I don't remember her -- her name, but I 16:11:33</p> <p>11 recall that her first name is Tani; is that right? 16:11:38</p> <p>12 A. Yeah, Tani Sapperstein. 16:11:40</p> <p>13 Q. Sapperstein? Okay. 16:11:42</p> <p>14 A. Yes. 16:11:44</p> <p>15 Q. And you only engaged her for literally 16:11:45</p> <p>16 about 14 days, right? 16:11:51</p> <p>17 A. No, actually about a day. My first meeting 16:11:52</p> <p>18 with her, she said -- her very first question was what 16:11:56</p> <p>19 is Sarbanes -- 16:12:04</p> <p>20 MR. LEE: Whoa. I don't want you to 16:12:05</p> <p>21 discuss anything that you discussed with your 16:12:07</p> <p>22 attorney. Even if it's funny or just meaningless, 16:12:10</p> <p>23 just don't go into anything where you were discussing 16:12:13</p> <p>24 with your attorney. 16:12:16</p> <p>25 A. Yes. Yes. 16:12:17</p>	<p>1 Q. Is it your understanding that The 16:13:43</p> <p>2 Employment Law Group produced all relevant evidence in 16:13:45</p> <p>3 2015 in the OSHA proceeding, right? 16:13:48</p> <p>4 MR. LEE: Objection to the form of the 16:13:50</p> <p>5 question, calls for speculation. 16:13:51</p> <p>6 Q. Is that correct? 16:13:57</p> <p>7 A. It's my understanding they had. 16:14:02</p> <p>8 Q. And you knew at the time that The 16:14:04</p> <p>9 Employment Law Group was considered one of the top law 16:14:06</p> <p>10 firms in the country for whistleblower cases, correct? 16:14:09</p> <p>11 A. Can you ask that again? 16:14:14</p> <p>12 Q. You concluded, you believed that The 16:14:16</p> <p>13 Employment Law Group was considered one of the top law 16:14:20</p> <p>14 firms in the country for whistleblower claims, 16:14:23</p> <p>15 correct? 16:14:25</p> <p>16 A. That was my belief. 16:14:25</p> <p>17 Q. Okay. And, in fact, you said that you 16:14:26</p> <p>18 thought that God had brought Scott Oswald to you; 16:14:29</p> <p>19 isn't that right? 16:14:35</p> <p>20 A. Yes, I said that. 16:14:35</p> <p>21 Q. And you indicated that there are additional 16:14:37</p> <p>22 documents that you feel are relevant to your claim 16:14:46</p> <p>23 that you didn't end up -- that did not end up in your 16:14:50</p> <p>24 possession either in your email or through the removal 16:14:54</p> <p>25 of hard-copy documents, correct? 16:14:56</p>
211	213
<p>1 Q. And did she do something -- did she reach 16:12:17</p> <p>2 out to the company on your behalf? 16:12:20</p> <p>3 A. I don't know that she did. Right after 16:12:22</p> <p>4 hiring her, after that first meeting, I was -- I 16:12:25</p> <p>5 terminated her as my counsel. 16:12:29</p> <p>6 Q. Right. And then in early August, you 16:12:31</p> <p>7 retained The Employment Law Group, correct? 16:12:34</p> <p>8 A. That's correct. I don't know the exact 16:12:38</p> <p>9 date, but I did -- I did retain them, yes. 16:12:41</p> <p>10 Q. We'll run into that in a little bit. 16:12:50</p> <p>11 And The Employment Law Group advised you that 16:12:55</p> <p>12 you had an obligation to retain all relevant documents 16:12:58</p> <p>13 for the litigation, right? 16:13:02</p> <p>14 A. Yes. 16:13:03</p> <p>15 MR. LEE: Objection. Objection. Don't go 16:13:04</p> <p>16 into anything where, you know, any lawyer that you 16:13:09</p> <p>17 were working with. 16:13:12</p> <p>18 Q. But you knew -- you knew that you had an 16:13:16</p> <p>19 obligation to retain relevant documents, right? 16:13:19</p> <p>20 A. Yes. 16:13:22</p> <p>21 Q. And as you mentioned before, The Employment 16:13:23</p> <p>22 Law Group produced documents in your possession in 16:13:28</p> <p>23 2015 in the OSHA proceeding, correct? 16:13:32</p> <p>24 MR. LEE: Objection to the form of the 16:13:35</p> <p>25 question, calls for speculation. 16:13:38</p>	<p>1 A. Correct. 16:14:58</p> <p>2 Q. And what other documents do you feel are 16:14:59</p> <p>3 relevant to the Sarbanes-Oxley bucket that we've been 16:15:04</p> <p>4 talking about that did not end up in your possession? 16:15:09</p> <p>5 A. So the early emails between myself and 16:15:13</p> <p>6 Kathy Salvador, I don't believe I have. I thought in 16:15:19</p> <p>7 the OSHA proceeding the judge had said there's public 16:15:25</p> <p>8 interest to knowing the interaction between Buck 16:15:29</p> <p>9 Upson, Pioneer Tool, and Larry Flatley, and that was 16:15:38</p> <p>10 never provided. And there are probably more that I 16:15:41</p> <p>11 can think of in just this little brief thing off the 16:15:47</p> <p>12 top of my head, but there are quite a few documents 16:15:49</p> <p>13 that I really wish I had but that I do not. 16:15:55</p> <p>14 Q. Let me refer you to Exhibit 19 in the 16:16:03</p> <p>15 tabbed packet that you have. 16:16:08</p> <p>16 (Exhibit 19 previously marked 16:16:05</p> <p>17 for identification and referenced 16:16:11</p> <p>18 herein: Amended Complaint for Relief) 16:16:11</p> <p>19 A. Okay. 16:16:11</p> <p>20 Q. And Exhibit 19 is a copy of the original 16:16:14</p> <p>21 OSHA complaint that was filed on your behalf, correct? 16:16:17</p> <p>22 A. It looks to be, yep. 16:16:20</p> <p>23 Q. And you reviewed this complaint before it 16:16:26</p> <p>24 was filed with OSHA, right? 16:16:31</p> <p>25 A. At that time, yes. 16:16:33</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

55 (Pages 214 to 217)

<p style="text-align: right;">214</p> <p>1 Q. And when was the first time you reviewed a 16:16:36</p> <p>2 draft of Exhibit 19? 16:16:38</p> <p>3 A. The first time? 16:16:40</p> <p>4 Q. Right. 16:16:44</p> <p>5 A. I don't see the date on the document, but 16:16:45</p> <p>6 it would have been within days of when it was filed. 16:17:04</p> <p>7 Q. Did you review it before it was filed? 16:17:09</p> <p>8 A. My recollection was that I, in fact, I did. 16:17:12</p> <p>9 Q. And how long before it was filed did you 16:17:19</p> <p>10 review it? 16:17:21</p> <p>11 A. If -- if I was provided a copy, it would 16:17:23</p> <p>12 have been a day or so. 16:17:27</p> <p>13 Q. And it's accurate to say that The 16:17:30</p> <p>14 Employment Law Group waited to file this complaint 16:17:34</p> <p>15 until, like, late September, right? 16:17:37</p> <p>16 MR. LEE: Objection to form of the 16:17:39</p> <p>17 question, calls for speculation. 16:17:43</p> <p>18 A. Yeah, I would say you'd have to ask The 16:17:47</p> <p>19 Employment Law Group what -- what they were -- whether 16:17:51</p> <p>20 they delayed it or not. I don't know. 16:17:54</p> <p>21 Q. You reported to friends and family in your 16:17:57</p> <p>22 text messages in mid September that the complaint 16:18:00</p> <p>23 was -- that you were waiting to file a complaint until 16:18:03</p> <p>24 late September; isn't that right? 16:18:06</p> <p>25 A. There was a theory that Smith &amp; Wesson was 16:18:08</p>	<p style="text-align: right;">216</p> <p>1 lawyers. 16:20:09</p> <p>2 A. So, okay, what was -- is that question 16:20:14</p> <p>3 still posed or -- 16:20:18</p> <p>4 Q. Yes. Your counsel is just saying don't 16:20:20</p> <p>5 respond to any extent that it requires the disclosure 16:20:23</p> <p>6 of attorney-client protected communications. 16:20:27</p> <p>7 A. Okay. 16:20:29</p> <p>8 Q. If you have an answer to that that does 16:20:29</p> <p>9 not -- 16:20:33</p> <p>10 A. Yes. Could you tell me the question again? 16:20:33</p> <p>11 Q. Let me -- let me break it down so it's -- 16:20:36</p> <p>12 When did you first suspect that Smith &amp; Wesson 16:20:40</p> <p>13 had engaged in actions that violated any of the laws 16:20:42</p> <p>14 in Section 806 of Sarbanes-Oxley? 16:20:46</p> <p>15 A. I -- after you, please. 16:20:52</p> <p>16 MR. LEE: Objection, calls for speculation 16:20:52</p> <p>17 to the point -- to the extent Mr. Baker has an 16:20:54</p> <p>18 understanding of whatever is the law that you just 16:20:58</p> <p>19 stated, Section 806 or whatever. 16:21:00</p> <p>20 Go ahead. 16:21:08</p> <p>21 A. From the standpoint of Smith &amp; Wesson 16:21:08</p> <p>22 breaking this law, what I reported was a person within 16:21:14</p> <p>23 the facility exhibiting undue influence on the 16:21:21</p> <p>24 purchases of the company's vendors. So that I don't 16:21:27</p> <p>25 conclude as Smith &amp; Wesson doing anything wrong. That 16:21:35</p>
<p style="text-align: right;">215</p> <p>1 playing out the string in that there was a -- just 16:18:16</p> <p>2 searching for the right term in my head -- statute of 16:18:26</p> <p>3 limitations on a Sarbanes claim, and that -- that 16:18:31</p> <p>4 there may be a reason why I was placed on extended 16:18:37</p> <p>5 leave for so long that didn't make sense, but if they 16:18:43</p> <p>6 were trying to wait until a -- the statute of 16:18:48</p> <p>7 limitations had taken place on the Sarbanes 16:18:55</p> <p>8 submission, that we wanted to give Smith &amp; Wesson 16:18:57</p> <p>9 every opportunity to bring me back to work, and that 16:19:00</p> <p>10 was the rationale for, it's -- it's the -- the last 16:19:05</p> <p>11 possible day, we don't want statute of limitations to 16:19:12</p> <p>12 run out, so we filed. But we gave every opportunity 16:19:15</p> <p>13 for that -- for Smith &amp; Wesson to do the right thing 16:19:18</p> <p>14 and allow me to go back to work. And, in fact, Anne 16:19:21</p> <p>15 Bruce was in discussions with me about coming back to 16:19:26</p> <p>16 work, and we have documents to support that. 16:19:28</p> <p>17 Q. You said that the -- that there were 16:19:37</p> <p>18 discussions about Sarbanes-Oxley going back some time 16:19:41</p> <p>19 where you were raising Sarbanes-Oxley issues. When 16:19:46</p> <p>20 did you first suspect or conclude that Smith &amp; Wesson 16:19:49</p> <p>21 was violating any of the laws enumerated in Section 16:19:53</p> <p>22 806 of Sarbanes-Oxley? 16:19:59</p> <p>23 MR. LEE: Objection to the form of the 16:20:01</p> <p>24 question. Don't discuss anything that you discussed 16:20:02</p> <p>25 with lawyers before, not -- not even your previous 16:20:04</p>	<p style="text-align: right;">217</p> <p>1 is an individual within Smith &amp; Wesson was the nature 16:21:37</p> <p>2 of my claim. 16:21:40</p> <p>3 Q. And when did you first -- and that was 16:21:43</p> <p>4 Mr. Flatley, correct? 16:21:46</p> <p>5 A. Yes. 16:21:47</p> <p>6 Q. And when did you first suspect that he was 16:21:48</p> <p>7 engaging in actions as an individual that violated 16:21:50</p> <p>8 Sarbanes-Oxley? 16:21:56</p> <p>9 A. My first -- my first suspect or when I 16:21:57</p> <p>10 first suspected it? 16:22:03</p> <p>11 Q. Yes. 16:22:04</p> <p>12 A. My very first week at the first vendor 16:22:05</p> <p>13 meeting, as I'm walking back from the vendor meeting, 16:22:09</p> <p>14 there was an opportunity for Victor Matos, who was a 16:22:14</p> <p>15 representative of MSC, to speak with me alone without 16:22:19</p> <p>16 anyone else in that hearing. And he told me that they 16:22:25</p> <p>17 had -- he was only getting \$20,000 a year in work from 16:22:31</p> <p>18 Smith &amp; Wesson, and that that had abruptly changed, 16:22:40</p> <p>19 that 99 percent of the work went to MSC -- or to 16:22:46</p> <p>20 Pioneer, and it was right after they told 16:22:51</p> <p>21 Smith &amp; Wesson that Pioneer had been billing eight 16:22:58</p> <p>22 days a week. And he said right after I -- we blew the 16:23:04</p> <p>23 whistle on them, we lost all our work and we had to 16:23:10</p> <p>24 lay off a night shift. 16:23:13</p> <p>25 And I proceeded to tell him that, well, it's a 16:23:15</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

56 (Pages 218 to 221)

218		220	
1	new day, and that every decision I make will be on	16:23:20	
2	behalf of Smith & Wesson. So if you offer the best	16:23:25	
3	service and the best price, you can count on me to act	16:23:27	
4	fairly to your company as well as to Pioneer.	16:23:33	
5	So from that day on, it was my -- was -- caused	16:23:39	
6	me to suspect something is not right, that someone is	16:23:46	
7	billing eight days a week, and for the company to	16:23:49	
8	whistleblow on the other company, they then in turn	16:23:52	
9	lost all their work.	16:23:55	
10	So that's within the first week. So that would	16:23:56	
11	be the first inclination I had that something was	16:23:59	
12	wrong. And I told that to Mr. Cicero. And I can't	16:24:03	
13	recall at what point I got baseball tickets sent to my	16:24:11	
14	house, but, you know, as things unfold, you get people	16:24:15	
15	inducing you to -- sending you things that you've	16:24:22	
16	never asked for and it's not proper for you to take,	16:24:29	
17	or inferring that you're going to receive something at	16:24:33	
18	a banquet just because you're Smith & Wesson, those	16:24:36	
19	are things that can't be ignored.	16:24:40	
20	And at -- at some point it gets to a tipping	16:24:44	
21	point where you say, you know, everything that you	16:24:48	
22	hear is not necessarily true, and everything that you	16:24:52	
23	hear is not necessarily some big conspiracy, but at	16:24:55	
24	some point those things hit a tipping point where the	16:24:59	
25	balance shifts and you think this is not right and	16:25:02	
219		221	
1	something is -- should be done about it. And, you	16:25:07	
2	know, so you asked for the first point, that's the	16:25:12	
3	first point.	16:25:14	
4	Q. And when did you hit that tipping point?	16:25:16	
5	A. For me, the -- the banquet thing at	16:25:21	
6	Pioneer, the barbecue, was the big point. So that --	16:25:30	
7	that was pretty much it for me. But, again, it's like	16:25:36	
8	certain things -- it's a gradual thing, but if -- if I	16:25:43	
9	were to define one point, it was right around that	16:25:51	
10	time.	16:25:55	
11	Q. In your discussions with Mr. Cicero you	16:25:55	
12	raise concerns about a company called -- or a vendor	16:26:00	
13	called Rhode Island Carbide; is that right?	16:26:02	
14	A. Yes.	16:26:04	
15	Q. And what was the concern that you raised	16:26:04	
16	with Mr. Cicero about Rhode Island Carbide?	16:26:06	
17	A. I had said that there was a -- there was a	16:26:11	
18	vendor that I just -- part of the Houlton project was	16:26:21	
19	a \$60 million expansion. So we had to get a lot of	16:26:24	
20	tooling for that project. We knew that the current	16:26:27	
21	vendors that we had, we could swamp them with one	16:26:29	
22	order. Pioneer and MSC alone, with us, wouldn't be	16:26:34	
23	enough to -- to make enough tools for that \$60 million	16:26:39	
24	expansion, so we had to involve other vendors.	16:26:46	
25	So Rhode Island Carbide was one that I visited,	16:26:50	
1	because we wanted to look at -- at their machine that	16:26:55	
2	we were thinking of purchasing. But in going there,	16:26:58	
3	we saw that they were -- I liked how the shop was set	16:27:03	
4	up, and we allowed them to quote the job.	16:27:08	
5	So for the Houlton project, we had a huge	16:27:10	
6	order. I'd just be guessing at the number. Let's say	16:27:14	
7	it's a \$60, \$70,000 order. We met with Larry Flatley,	16:27:18	
8	myself, Andrew Dziobek, Mike Jurga, myself, and	16:27:25	
9	Derrick Hedley, went to most of those meetings, but we	16:27:35	
10	would meet daily on the Houlton project towards the	16:27:39	
11	end to make sure they had enough tools and everyone	16:27:41	
12	was on the same page of what we were ordering, what we	16:27:44	
13	were buying.	16:27:47	
14	So it was determined we needed a certain tool.	16:27:47	
15	We said Rhode Island Carbide does those for us,	16:27:50	
16	they're cheaper from them. They were charging 39.	16:27:56	
17	Our in-house price was 46. Rhode Island Carbide was	16:27:59	
18	doing them cheaper than what we could ourselves, but,	16:28:05	
19	again, we couldn't even do them ourselves because of	16:28:09	
20	the volume of work required.	16:28:11	
21	That very next day I got an email from Derek	16:28:13	
22	Upson stating he'd like to bid on those type of tools.	16:28:17	
23	He said he saw them being loaded in the RoboCrib up in	16:28:20	
24	Houlton, Mass. It was a strange email, because the	16:28:25	
25	only time that Derek Upson himself ever solicited work	16:28:28	
1	was he has a salesman and he has a representative, Tim	16:28:32	
2	Hebert, his only job is to represent Pioneer to us.	16:28:37	
3	He is their liaison.	16:28:42	
4	So he didn't go through them, but Upson wants	16:28:43	
5	that type of work. He bids on it and bids \$19. It's	16:28:46	
6	strange in that they had produced the tool before	16:28:53	
7	Rhode Island Carbide started doing it at \$65 apiece,	16:28:59	
8	and he's just saying, I'd like to bid and here's my	16:29:05	
9	bid, \$19, under the price that it can even be produced	16:29:08	
10	for. He's losing money on it.	16:29:14	
11	And I asked Mr. Cicero. This is suspicious,	16:29:16	
12	because why would a company, without any knowledge	16:29:18	
13	that somebody else is getting this tool, lower their	16:29:21	
14	bid from \$65 to \$19 unless he's been told there's this	16:29:26	
15	huge order out there he can get, which, if he was,	16:29:32	
16	violates company policy. You're not allowed to tell	16:29:36	
17	people that someone else is getting work so you can	16:29:39	
18	bid on it.	16:29:43	
19	So I looked at that as an unfair trade practice	16:29:44	
20	and violated company policy to tell Mr. Upson that	16:29:50	
21	there's this huge order of tools he can get if he	16:29:54	
22	just, you know, would talk to me about those tools.	16:29:57	
23	Q. Did you know that Mr. Flatley told Pioneer	16:30:01	
24	about the pricing that had been offered by Hassay	16:30:06	
25	Savage?	16:30:13	

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald

August 14, 2020

57 (Pages 222 to 225)

	222		224		
1	A. The Hassay Savage situation?	16:30:13	1	ask him for a quote for the tools that are specified	16:33:08
2	Q. I'm sorry. I'm sorry. Let me -- let me	16:30:14	2	in the email?	16:33:11
3	strike that. I just -- I just misspoke.	16:30:16	3	A. After he solicited me and I talked to	16:33:12
4	Do you know that Mr. -- do you know with	16:30:18	4	Mr. Suraci, yes.	16:33:14
5	personal knowledge that Mr. Flatley provided the	16:30:23	5	Q. And on your email from 5-21, which is a	16:33:16
6	pricing information to Rhode Island Carbide?	16:30:28	6	couple inches down on -- on page 215, you asked for	16:33:24
7	A. I deduced it, but I do not know for a	16:30:31	7	one more tool, correct?	16:33:29
8	certainty. Flatley and myself were the only ones that	16:30:34	8	MR. LEE: Where are we right now, on SW	16:33:37
9	had that information.	16:30:37	9	215?	16:33:40
10	Q. So let me refer you to Exhibit 25 in the	16:30:40	10	MS. BERTRAM: Yeah, 215, the first full	16:33:40
11	tabbed group.	16:30:44	11	email that's there. It's about 3 inches down on the	16:33:43
12	(Exhibit 25 previously marked	16:30:46	12	page.	16:33:45
13	for identification and referenced		13	MR. LEE: At 5:21 p.m., that's the one	16:33:53
14	herein: Email correspondence from		14	you're pointing to?	16:33:56
15	(topmost) E Baker to E Suraci sent		15	MS. BERTRAM: Yes.	16:33:57
16	3/26/2014)	16:30:47	16	MR. LEE: Okay.	16:33:58
17	Q. This is a group of documents with the Bates	16:30:47	17	A. And -- and what was the question?	16:34:05
18	ranges of 214 --	16:30:49	18	Q. The -- you asked him to quote 25 pieces of	16:34:07
19	A. Yes, I see them.	16:30:56	19	T11709-01 as well, correct?	16:34:12
20	Q. -- 216, and it also includes SW 166 through	16:30:57	20	A. Yes.	16:34:16
21	67 and SW 224 through 226 and SW 231 through 192 and	16:31:07	21	Q. And then Mr. Upson responds back at 5:27	16:34:19
22	SW 193, 194 -- there's more than I thought -- and SW	16:31:26	22	with the solicitation that you've described already in	16:34:24
23	358. Is that right?	16:31:34	23	your -- in your testimony, correct?	16:34:27
24	A. Yes. I see them all.	16:31:35	24	A. I don't see the 5:27.	16:34:32
25	Q. Okay.	16:31:36	25	Q. It starts at the bottom of page 214 and	16:34:35
	223			225	
1	MR. LEE: So what -- I'm sorry. Sorry.	16:31:37	1	then goes over to the top of 215.	16:34:37
2	Are we on an exhibit number, or are you on a Bates	16:31:39	2	A. Oh, at 5:27 p.m. I thought you said March	16:34:45
3	number right now?	16:31:42	3	27th. Okay. I see it.	16:34:49
4	MS. BERTRAM: It's Exhibit 25, and I was	16:31:43	4	Q. Okay. Okay. And that's the solicitation	16:34:50
5	just reading off the Bates numbers --	16:31:45	5	that you've described in your testimony, correct?	16:34:52
6	MR. LEE: Okay. Got it.		6	A. Yeah, that's it.	16:34:59
7	MS. BERTRAM: -- on the documents that are	16:31:46	7	Q. And in your response you agreed to let him	16:35:06
8	grouped together in Exhibit 25.	16:31:47	8	bid for the items and identified exactly which tools	16:35:08
9	MR. LEE: Got it.	16:31:52	9	you were looking for, correct?	16:35:11
10	Q. Now, first, the first -- first set is --	16:31:52	10	A. Yes.	16:35:13
11	the first couple pages are an email communication	16:31:58	11	Q. And then in the email that you forwarded to	16:35:13
12	between you and Pioneer Tools, right?	16:32:00	12	Mr. Suraci, did you describe all of the concerns that	16:35:19
13	A. Yes. Well, at the bottom of the page. At	16:32:08	13	you had with respect to this potential transaction?	16:35:22
14	the top of the page, it's a forward of mine to Ed	16:32:12	14	MR. LEE: Objection to the form of the	16:35:27
15	Suraci, correct?	16:32:20	15	question, but you may answer.	16:35:28
16	Q. That's right. So -- but if you go to the	16:32:21	16	A. I don't know that I -- I expressed all of	16:35:30
17	bottom of page 215, there's an email there, at 3:55	16:32:24	17	my concerns. So my only issue is with the term "all."	16:35:33
18	p.m., where you requested from Mr. Upson some quotes	16:32:31	18	I expressed my concerns with him and some of the	16:35:39
19	for tools at Houlton, right?	16:32:35	19	concerns off the top of my head that I, first of all,	16:35:47
20	A. That was after Mr. Upson solicited me that	16:32:37	20	don't think he should have been aware that we were	16:35:50
21	he would like to bid on those tools. He shouldn't	16:32:42	21	bidding that tool out, but now that he did know, I had	16:35:52
22	have known -- even known we were -- we had those tools	16:32:45	22	no problem with him bidding the tool, but, again, I	16:35:55
23	to bid unless Mr. Flatley let him know that we had 300	16:32:48	23	posed the question, what would cause a business to --	16:36:00
24	tools being bid out at \$40 apiece.	16:32:57	24	to quote \$19 on one that they had been producing for	16:36:05
25	Q. Yeah, but my simple question was, did you	16:33:02	25	\$65, if someone had not given him the bid and the	16:36:09



Baker, Earl Donald

August 14, 2020

58 (Pages 226 to 229)

226	228
<p>1 amount. 16:36:13</p> <p>2 Q. And that's your speculation, correct? 16:36:15</p> <p>3 A. It's a question based on human nature and 16:36:20</p> <p>4 22 years in the business. What would cause a company 16:36:26</p> <p>5 to reduce their price by that much, from \$65 to \$19? 16:36:28</p> <p>6 Q. Let's look at the second email, the second 16:36:36</p> <p>7 group of emails in Exhibit 25, and it starts on page 16:36:39</p> <p>8 166 and goes to 167. 16:36:46</p> <p>9 A. Yes. 16:36:49</p> <p>10 Q. At the top that's an email that you 16:36:49</p> <p>11 forwarded to Mr. Suraci, correct? 16:36:51</p> <p>12 A. Yes. 16:36:53</p> <p>13 Q. And you said that the price that Pioneer 16:36:54</p> <p>14 had charged before was \$65, correct? 16:36:59</p> <p>15 A. Yes. 16:37:02</p> <p>16 Q. And the basis for the \$65 number was that 16:37:03</p> <p>17 screenshot that had been provided to you by Erica 16:37:07</p> <p>18 Matos, correct? 16:37:10</p> <p>19 A. No, that wasn't the basis for it. The 16:37:11</p> <p>20 basis for it was I actually had that document or that 16:37:13</p> <p>21 quotation in my hand at the time I called Mr. Cicero 16:37:18</p> <p>22 and told him that I have the -- the bid in my hand, 16:37:22</p> <p>23 because Mr. Cicero speculated, well, possibly Derek 16:37:28</p> <p>24 was soliciting a tool that he hadn't made before. And 16:37:32</p> <p>25 I said, no, he's made it, and he charged \$65. 16:37:36</p>	<p>1 an SAP form printed out that -- sometimes we needed 16:39:27</p> <p>2 to -- to keep reference in the office, it would be in 16:39:30</p> <p>3 a file like I described, that old invoice file, that 16:39:33</p> <p>4 let's say they would bid on a job that I didn't -- I 16:39:39</p> <p>5 wasn't aware that they had actually produced for us 16:39:43</p> <p>6 before, I could leaf through and find out, oh, okay, 16:39:45</p> <p>7 they made this, so the price should be in this range. 16:39:48</p> <p>8 But I keep that just so that -- I can't -- we 16:39:51</p> <p>9 had 13,000 different tools. If I were to bid a tool 16:39:55</p> <p>10 to Rhode Island Carbide, how do I know that they're in 16:40:00</p> <p>11 the ballpark of what someone else charged. It would 16:40:04</p> <p>12 be that file. So that's the file I had that showed 16:40:08</p> <p>13 that we had been buying that tool from Derek Upson for 16:40:11</p> <p>14 \$65. 16:40:16</p> <p>15 Q. What was the name -- I mean, what was the 16:40:17</p> <p>16 name of the document within SAP, do you recall? 16:40:19</p> <p>17 A. No, but it's -- it was just a common 16:40:24</p> <p>18 purchase order document. 16:40:29</p> <p>19 Q. And did you print it out? 16:40:32</p> <p>20 A. I already had a copy of it that I would 16:40:36</p> <p>21 imagine Stanley had printed out and it was in that 16:40:40</p> <p>22 file. So at the time we were soliciting tools to be 16:40:44</p> <p>23 made outside at Rhode Island Carbide, I probably 16:40:49</p> <p>24 referred to that document to know whether or not 16:40:55</p> <p>25 their -- their price was even in line. 16:40:57</p>
227	229
<p>1 And I posed the same question to him I just did 16:37:40</p> <p>2 to you. What would cause a business to go from that 16:37:43</p> <p>3 to that? He said, let's take this up again tomorrow 16:37:45</p> <p>4 morning. And that night my office was broken into and 16:37:49</p> <p>5 that document was taken. 16:37:53</p> <p>6 So this is a document to prove that -- so when 16:37:58</p> <p>7 we -- I tried to get another copy of it off SAP, it 16:38:03</p> <p>8 didn't exist. SAP says, we don't have a record of you 16:38:07</p> <p>9 ever ordering that tool from Pioneer, especially at 16:38:10</p> <p>10 \$65. They have no record of that tool. 16:38:17</p> <p>11 So I'm frustrated. So I talk to Erica Matos in 16:38:20</p> <p>12 accounts payable. Accounts payable has record that 16:38:26</p> <p>13 they paid the invoice. And I forwarded it to 16:38:29</p> <p>14 Mr. Cicero to show him that the database in purchasing 16:38:32</p> <p>15 had been altered, because I had an SAP document in my 16:38:37</p> <p>16 hand saying that they had produced that tool for \$65 16:38:41</p> <p>17 apiece, and now that was stolen and it's no longer in 16:38:47</p> <p>18 SAP. 16:38:52</p> <p>19 That is a SEC violation to alter the database 16:38:53</p> <p>20 of purchasing in a publicly held company, and this is 16:38:57</p> <p>21 proof that that took place. 16:39:02</p> <p>22 Q. Describe the invoice that you had in your 16:39:13</p> <p>23 hand to show the price previously paid by 16:39:15</p> <p>24 Smith &amp; Wesson. 16:39:17</p> <p>25 A. It was -- it was in the form of a -- it was 16:39:19</p>	<p>1 If Pioneer's was cheaper, I wouldn't have given 16:40:58</p> <p>2 the order to -- to Rhode Island. So I just used that 16:41:01</p> <p>3 to confirm that Rhode Island's price was good. If 16:41:05</p> <p>4 Pioneer's was better, they would have got the work. 16:41:13</p> <p>5 So that was the nature of why I had it in the 16:41:15</p> <p>6 office. So I didn't print it out specifically for 16:41:17</p> <p>7 this issue. I actually already had it in the office. 16:41:20</p> <p>8 Q. I'm confused. I thought you said that you 16:41:25</p> <p>9 found it on SAP; is that right? 16:41:27</p> <p>10 A. No. It's an SAP document, so it had to 16:41:30</p> <p>11 come out of SAP because an SAP document looks 16:41:34</p> <p>12 different than an AS400 document. 16:41:39</p> <p>13 Q. So it was a document from SAP that somebody 16:41:42</p> <p>14 else had printed out. 16:41:48</p> <p>15 A. Yes. 16:41:50</p> <p>16 Q. Okay. And where did you find it within the 16:41:50</p> <p>17 paper files? 16:41:52</p> <p>18 A. Well, it was someplace in the drawer. It 16:41:54</p> <p>19 probably -- 16:41:57</p> <p>20 Q. Do you recall how it was filed in the 16:41:57</p> <p>21 drawer? 16:41:58</p> <p>22 A. Stanley kept a file of current tools that 16:42:01</p> <p>23 were -- were bidding out on a regular basis. And so 16:42:11</p> <p>24 the confirmation of it was even in Derek Upson's 16:42:16</p> <p>25 email. He says of a tool they produced before so -- 16:42:20</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

59 (Pages 230 to 233)

230	232
<p>1 Q. Right, but he didn't identify in his email 16:42:24</p> <p>2 what the price was, right? 16:42:26</p> <p>3 <b>A. He does in one, yes.</b> 16:42:28</p> <p>4 Q. He does in one? 16:42:30</p> <p>5 <b>A. Yes, he does.</b> 16:42:31</p> <p>6 Q. Which email? 16:42:33</p> <p>7 <b>A. I don't know if you have it here, but in</b> 16:42:35</p> <p>8 <b>one email he tells somebody that -- I think we were</b> 16:42:38</p> <p>9 <b>doing it for \$35.</b> 16:42:41</p> <p>10 Q. For what? I'm sorry. 16:42:43</p> <p>11 <b>A. I think he says that, I think we were doing</b> 16:42:45</p> <p>12 <b>them for 35 is his comment, but he was doing them for</b> 16:42:48</p> <p>13 <b>65.</b> 16:42:56</p> <p>14 Q. So you're assuming that's just a typo? 16:42:57</p> <p>15 <b>A. Well, I -- I don't know. I just was</b> 16:42:59</p> <p>16 <b>saying -- you mentioned that he never gives the price.</b> 16:43:02</p> <p>17 <b>I was just saying, that, yes, in one of the emails he</b> 16:43:06</p> <p>18 <b>does give a price that he thinks he was charging, but</b> 16:43:08</p> <p>19 <b>I didn't speculate whether it was a typo or what.</b> 16:43:13</p> <p>20 <b>It's just that he was incorrect in what he stated.</b> 16:43:18</p> <p>21 Q. I think we just misunderstood each other. 16:43:22</p> <p>22 I was -- I was -- I thought you had said that he had 16:43:24</p> <p>23 quoted a price of \$65. 16:43:27</p> <p>24 <b>A. No, he --</b> 16:43:32</p> <p>25 Q. And do you recall when -- the date of the 16:43:33</p>	<p>1 224. 16:45:17</p> <p>2 <b>A. What is the Bates number?</b> 16:45:21</p> <p>3 Q. It's 224. 16:45:23</p> <p>4 MR. LEE: We are still in Exhibit 25? 16:45:26</p> <p>5 MS. BERTRAM: That's correct. 16:45:30</p> <p>6 <b>A. It's not the next document, it's two</b> 16:45:31</p> <p>7 <b>documents over.</b> 16:45:33</p> <p>8 Q. Right, two pages. 16:45:33</p> <p>9 <b>A. Okay.</b> 16:45:35</p> <p>10 Q. And if we look at the top, this is an email 16:45:43</p> <p>11 that you sent to Mr. Suraci on March 27, 2014? 16:45:46</p> <p>12 <b>A. Mm-hmm. Yes.</b> 16:45:51</p> <p>13 Q. Let's turn to page 231, which is three more 16:45:52</p> <p>14 pages beyond that one. This is further email 16:46:04</p> <p>15 communications with Mr. Suraci about Rhode Island 16:46:09</p> <p>16 Carbide, correct? 16:46:12</p> <p>17 <b>A. It's either --</b> 16:46:28</p> <p>18 MR. LEE: Objection to the form of the 16:46:28</p> <p>19 question, but may I have it read back, please? I 16:46:29</p> <p>20 didn't quite understand it.</p> <p>21 (The record was read by the reporter.) 16:46:48</p> <p>22 <b>A. The bottom email is the exact same email,</b> 16:46:48</p> <p>23 <b>so it's not a further communication.</b> 16:46:50</p> <p>24 Q. Referring you to the top, which is March 16:46:52</p> <p>25 27th, 2014 at 5:27 p.m. 16:46:56</p>
231	233
<p>1 purchase order that you had found in the drawer? 16:43:46</p> <p>2 <b>A. No, I don't, but if -- since it was an SAP</b> 16:43:49</p> <p>3 <b>document, you can tell what the implementation of SAP</b> 16:43:53</p> <p>4 <b>was and extrapolate from that, that it had to be at</b> 16:43:56</p> <p>5 <b>least after a certain date. I don't know what that</b> 16:44:00</p> <p>6 <b>date might be, but you would be able to find out.</b> 16:44:04</p> <p>7 Q. And do you recall whether -- do you recall 16:44:07</p> <p>8 the number of units that were being purchased for \$65 16:44:09</p> <p>9 a unit? 16:44:13</p> <p>10 <b>A. No, I don't. I did remember the -- to be</b> 16:44:14</p> <p>11 <b>honest, in a couple of my writings to Ed, I mentioned</b> 16:44:17</p> <p>12 <b>65 and I think once I may have said 62. It was just</b> 16:44:22</p> <p>13 <b>my recollection varied a little bit, but I was just</b> 16:44:26</p> <p>14 <b>trying to communicate the overall theme of things</b> 16:44:31</p> <p>15 <b>that, yeah, well, they had made it before and it was</b> 16:44:36</p> <p>16 <b>in that price range.</b> 16:44:40</p> <p>17 Q. And do you know whether the -- the units 16:44:46</p> <p>18 that were sold for \$65, whether they were on a -- on a 16:44:48</p> <p>19 rush basis? 16:44:52</p> <p>20 <b>A. It didn't say rush, but I would have no</b> 16:44:56</p> <p>21 <b>idea.</b> 16:44:58</p> <p>22 Q. And did you have any further communications 16:45:00</p> <p>23 with Mr. Suraci about Rhode Island Carbide? 16:45:02</p> <p>24 <b>A. We had a lot of talks about them.</b> 16:45:07</p> <p>25 Q. Let's go to the next document, which is 16:45:15</p>	<p>1 <b>A. No, I would say that that is --</b> 16:46:59</p> <p>2 <b>Rhode Island Carbide is mentioned in there, but it's</b> 16:47:04</p> <p>3 <b>talking more in terms of Pioneer in my estimation.</b> 16:47:06</p> <p>4 <b>That's Carl and Ted. That's Pioneer. So it -- it</b> 16:47:15</p> <p>5 <b>involves Rhode Island Carbide, but it's about, in my</b> 16:47:18</p> <p>6 <b>estimation, it's about -- the topic is about Pioneer.</b> 16:47:23</p> <p>7 Q. In that -- in this email at the top you 16:47:27</p> <p>8 refer to Andrew Dziobek, D-Z-I-O-B-E-K? Is that 16:47:30</p> <p>9 right? 16:47:39</p> <p>10 <b>A. If you pronounce it like it's Joe Beck,</b> 16:47:39</p> <p>11 <b>like J-O-B-E-K, then that's the phonetical way.</b> 16:47:41</p> <p>12 Q. All right. So did you talk with 16:47:47</p> <p>13 Mr. Dziobek about Pioneer's pricing? 16:47:49</p> <p>14 <b>A. Yes, I did.</b> 16:47:57</p> <p>15 Q. And when did you speak with him? 16:48:00</p> <p>16 <b>A. Right after this happened. I couldn't --</b> 16:48:02</p> <p>17 <b>after the document was missing from my desk, I tried</b> 16:48:04</p> <p>18 <b>to pull it up on SAP. Because it was a fairly new</b> 16:48:07</p> <p>19 <b>system to all of us, we -- I thought, well, maybe I'm</b> 16:48:11</p> <p>20 <b>doing something wrong. So I elicited his help in</b> 16:48:15</p> <p>21 <b>trying to get that document. He could not pull it up</b> 16:48:18</p> <p>22 <b>either. He said, let me get back with you. He</b> 16:48:21</p> <p>23 <b>checked with his boss and said it is nowhere in SAP.</b> 16:48:24</p> <p>24 Q. And did he say that the system was wiped 16:48:34</p> <p>25 clean? 16:48:36</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

60 (Pages 234 to 237)

<p style="text-align: right;">234</p> <p>1 <b>A. Those weren't the words he used -- he said</b> 16:48:37</p> <p>2 <b>it's -- it is not -- well, let's see. The exact words</b> 16:48:42</p> <p>3 <b>he used is, we have no record in SAP that that tool</b> 16:48:45</p> <p>4 <b>was ever ordered from Pioneer.</b> 16:48:49</p> <p>5 <b>Q. And also look at SW 192 and SW 358, which</b> 16:48:55</p> <p>6 <b>should be the rest of the emails in this packet. The</b> 16:49:03</p> <p>7 <b>question that I'd ask you is do you recall any</b> 16:49:06</p> <p>8 <b>additional communications with Mr. Suraci about</b> 16:49:08</p> <p>9 <b>Rhode Island Carbide?</b> 16:49:12</p> <p>10 <b>A. Do I recall any? I don't, but that</b> 16:49:19</p> <p>11 <b>doesn't -- I don't know that there would be any need</b> 16:49:25</p> <p>12 <b>for it, so I don't know. I don't recall.</b> 16:49:27</p> <p>13 <b>Q. And did you provide all of these email</b> 16:49:31</p> <p>14 <b>communications to Mr. Cicero as well?</b> 16:49:33</p> <p>15 <b>A. I believe I did, yes.</b> 16:49:36</p> <p>16 <b>Q. And do you recall providing any other</b> 16:49:38</p> <p>17 <b>evidence to Mr. Suraci or Mr. Cicero relating to the</b> 16:49:41</p> <p>18 <b>Rhode Island Carbide issue?</b> 16:49:46</p> <p>19 <b>MR. LEE: Objection to the form of the</b> 16:49:47</p> <p>20 <b>question, but you may answer.</b> 16:49:48</p> <p>21 <b>A. I may have. My intent was to do whatever</b> 16:49:50</p> <p>22 <b>they asked and anything that they needed to make the</b> 16:49:56</p> <p>23 <b>conclusion. So if they required further things, I</b> 16:50:00</p> <p>24 <b>would send it. But in the same token, I knew they</b> 16:50:02</p> <p>25 <b>were both busy people and had other things to do other</b> 16:50:06</p>	<p style="text-align: right;">236</p> <p>1 <b>in the bidding process, that they were made aware that</b> 16:51:29</p> <p>2 <b>there was a bid and that they would reduce their price</b> 16:51:35</p> <p>3 <b>so much I felt that it was suspect, that there was</b> 16:51:38</p> <p>4 <b>something improper happening in the bidding process.</b> 16:51:43</p> <p>5 <b>So that was the nature of bringing it to their</b> 16:51:46</p> <p>6 <b>attention. But, again, when you're working on -- I</b> 16:51:49</p> <p>7 <b>have a thousand things to do. I had to do those</b> 16:51:54</p> <p>8 <b>things and make sure my department is productive,</b> 16:51:58</p> <p>9 <b>which I did.</b> 16:52:02</p> <p>10 <b>The issue is I kind of handed this thing off to</b> 16:52:04</p> <p>11 <b>them. They can run with it as much as they want.</b> 16:52:09</p> <p>12 <b>But, again, it wasn't my function of my job to</b> 16:52:13</p> <p>13 <b>investigate things. It was my job to let them know</b> 16:52:17</p> <p>14 <b>what was going on so they could investigate, and my</b> 16:52:20</p> <p>15 <b>job was to make that department function at its</b> 16:52:23</p> <p>16 <b>highest level and that's what I did.</b> 16:52:29</p> <p>17 <b>So once I gave it to them, unless they asked</b> 16:52:31</p> <p>18 <b>for something else, I didn't spend a whole lot of time</b> 16:52:33</p> <p>19 <b>on it.</b> 16:52:35</p> <p>20 <b>Q. And did you ever talk with Rhode Island</b> 16:52:41</p> <p>21 <b>Carbide about your concerns?</b> 16:52:45</p> <p>22 <b>A. Yes, but in the context, I got a call from</b> 16:52:46</p> <p>23 <b>Derrick -- I think it's Derrick Wilde -- his last name</b> 16:52:48</p> <p>24 <b>is Wilde for sure -- from Rhode Island Carbide, and he</b> 16:52:51</p> <p>25 <b>asked me if I knew a Derek Upson. I said yes, I do,</b> 16:52:56</p>
<p style="text-align: right;">235</p> <p>1 <b>than this, so I wanted to give them what they needed</b> 16:50:09</p> <p>2 <b>without giving them -- burdening them with more than</b> 16:50:12</p> <p>3 <b>they needed.</b> 16:50:16</p> <p>4 <b>Q. You don't recall anything else that you</b> 16:50:19</p> <p>5 <b>provided to them --</b> 16:50:21</p> <p>6 <b>A. No.</b> 16:50:22</p> <p>7 <b>Q. -- other than what's in Exhibit 25; is that</b> 16:50:22</p> <p>8 <b>right?</b> 16:50:24</p> <p>9 <b>MR. LEE: Object -- objection to the form</b> 16:50:24</p> <p>10 <b>of the question, but you may answer.</b> 16:50:25</p> <p>11 <b>A. Not that I recall.</b> 16:50:26</p> <p>12 <b>Q. And you described pulling this invoice from</b> 16:50:27</p> <p>13 <b>paper files in your office.</b> 16:50:39</p> <p>14 <b>A. That's correct.</b> 16:50:41</p> <p>15 <b>Q. You described -- you described trying to</b> 16:50:42</p> <p>16 <b>find the invoice on AS400 system and then going to</b> 16:50:44</p> <p>17 <b>Ms. Matos for -- for the legacy. You talked about</b> 16:50:51</p> <p>18 <b>getting information from Andrew Dziobek; you talked</b> 16:51:00</p> <p>19 <b>about getting information from Ms. Matos; and you</b> 16:51:05</p> <p>20 <b>talked about looking at the invoice; and then you also</b> 16:51:08</p> <p>21 <b>had email communications with Pioneer.</b> 16:51:12</p> <p>22 <b>Did you do anything else to investigate your</b> 16:51:15</p> <p>23 <b>concerns about the Rhode Island Carbide bidding?</b> 16:51:17</p> <p>24 <b>A. No. I -- my point, again, was just to</b> 16:51:20</p> <p>25 <b>point out that I felt something inappropriate happened</b> 16:51:25</p>	<p style="text-align: right;">237</p> <p>1 <b>and he said that somebody named Derek Upson has been</b> 16:53:01</p> <p>2 <b>looking into his profile on LinkedIn and he wanted to</b> 16:53:06</p> <p>3 <b>know if I knew him.</b> 16:53:10</p> <p>4 <b>I told him that was Derek Upson from Pioneer</b> 16:53:12</p> <p>5 <b>and so we -- we did discuss who Derek Upson was, and I</b> 16:53:17</p> <p>6 <b>did have occasion to, while I was on paid</b> 16:53:25</p> <p>7 <b>administrative leave, Mr. Wilde called me and said,</b> 16:53:29</p> <p>8 <b>"Since the day you've left, I've not received another</b> 16:53:35</p> <p>9 <b>order, what's going on?"</b> 16:53:37</p> <p>10 <b>I told him I was on paid leave and that, you</b> 16:53:41</p> <p>11 <b>know, I wasn't in charge of that anymore, but I told</b> 16:53:45</p> <p>12 <b>him he had the best price, the best delivery, good</b> 16:53:48</p> <p>13 <b>quality, I wouldn't worry about it. But I was wrong.</b> 16:53:52</p> <p>14 <b>After I was terminated, I talked to him a year later</b> 16:53:58</p> <p>15 <b>and he said he never got another job from</b> 16:54:01</p> <p>16 <b>Smith &amp; Wesson so ...</b> 16:54:04</p> <p>17 <b>Q. And did you report your conversation with</b> 16:54:08</p> <p>18 <b>the representative of Rhode Island Carbide to anyone</b> 16:54:13</p> <p>19 <b>at Smith &amp; Wesson?</b> 16:54:17</p> <p>20 <b>A. I believe I mentioned it to Mr. Cicero.</b> 16:54:18</p> <p>21 <b>Q. Are you certain or do you just think you</b> 16:54:21</p> <p>22 <b>did?</b> 16:54:24</p> <p>23 <b>A. I'm pretty certain, but I'm not sure.</b> 16:54:24</p> <p>24 <b>These are conversations that took place over seven</b> 16:54:27</p> <p>25 <b>years. I told him a number of things, and, basically,</b> 16:54:30</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

61 (Pages 238 to 241)

238	240
<p>1 I tried to tell him anything that he felt was relevant 16:54:36</p> <p>2 or that I felt was relevant. At the time I thought he 16:54:39</p> <p>3 was operating on behalf of Smith &amp; Wesson and its 16:54:43</p> <p>4 board of directors, and I did not believe that any 16:54:49</p> <p>5 longer, but I -- at the time I was there to help him 16:54:52</p> <p>6 in any way I could. 16:54:57</p> <p>7 Q. Do you contend that anyone at 16:55:22</p> <p>8 Smith &amp; Wesson violated Sarbanes-Oxley in connection 16:55:25</p> <p>9 with the situation with Rhode Island Carbide? 16:55:30</p> <p>10 A. I don't know. I think that would be more 16:55:38</p> <p>11 of a legal question. I -- 16:55:40</p> <p>12 MR. LEE: Don't -- don't discuss anything 16:55:42</p> <p>13 that you and I discussed. 16:55:43</p> <p>14 THE WITNESS: Yes, sir. 16:55:47</p> <p>15 Q. So you don't know who within 16:55:50</p> <p>16 Smith &amp; Wesson -- do you contend that anyone at 16:55:54</p> <p>17 Smith &amp; Wesson violated Sarbanes-Oxley in connection 16:55:57</p> <p>18 with the bidding with Rhode Island Carbide? 16:56:01</p> <p>19 MR. LEE: Objection to the form of the 16:56:04</p> <p>20 question. 16:56:06</p> <p>21 Again, if you can answer that question without 16:56:06</p> <p>22 going into the discussions that you and I have had, 16:56:08</p> <p>23 you may answer that, but with respect to the 16:56:11</p> <p>24 discussions that you and I have had about Rhode Island 16:56:14</p> <p>25 Carbide, don't discuss that. 16:56:18</p>	<p>1 question, misstates the witness's prior testimony. 16:58:16</p> <p>2 But objection to the question -- objection to form. 16:58:20</p> <p>3 Answer it, if you can. 16:58:23</p> <p>4 A. That's incorrect in that I do not believe 16:58:26</p> <p>5 that -- Pioneer has control of the AutoCrib database, 16:58:31</p> <p>6 which is used to bill us. That is not the database 16:58:36</p> <p>7 that was wiped clean. 16:58:40</p> <p>8 Q. Okay. 16:58:42</p> <p>9 A. So -- so -- 16:58:42</p> <p>10 Q. So Pioneer did not have access to the AS400 16:58:43</p> <p>11 that you looked at; is that right? 16:58:49</p> <p>12 A. No. And the AS400 was not altered. It was 16:58:50</p> <p>13 the SAP. 16:58:54</p> <p>14 Q. Do you know that -- Pioneer Tool did not 16:58:57</p> <p>15 have access to AS400 or SAP, correct? 16:58:59</p> <p>16 A. That's correct. 16:59:03</p> <p>17 Q. So who do you contend -- who do you contend 16:59:08</p> <p>18 wiped the information from AS400 or SAP? 16:59:12</p> <p>19 A. This is like a -- like a iceberg. Ninety 16:59:17</p> <p>20 percent of it's below water. I saw things that -- 16:59:23</p> <p>21 that struck me as being inappropriate. I didn't have 16:59:28</p> <p>22 a view of what was below water. I don't know who 16:59:32</p> <p>23 would have done so or who would have had the ability 16:59:36</p> <p>24 to do so. All I know is that those have to be 16:59:39</p> <p>25 maintained, ever since Enron, to make sure that 16:59:45</p>
239	241
<p>1 A. Again, I -- I just want to state that I -- 16:56:20</p> <p>2 I think your question is calling for me to make a 16:56:23</p> <p>3 legal conclusion that I'm not qualified to make. 16:56:26</p> <p>4 Q. So you -- you're not willing to tell me 16:56:34</p> <p>5 whether you thought that this was a Sarbanes-Oxley 16:56:38</p> <p>6 violation? 16:56:41</p> <p>7 MR. LEE: Objection to the form of the 16:56:42</p> <p>8 question, you -- asked and answered. He's not 16:56:43</p> <p>9 required to be a legal expert on SOX. He just needs 16:56:47</p> <p>10 to find a lawyer who does. 16:56:51</p> <p>11 Q. Who do you -- who do you contend engaged in 16:56:56</p> <p>12 inappropriate conduct in connection with the 16:56:59</p> <p>13 Rhode Island Carbide situation? 16:57:02</p> <p>14 A. I -- I don't know that my purview would be 16:57:09</p> <p>15 complete to say who everyone was that was involved. I 16:57:13</p> <p>16 do feel that company policy was violated and that 16:57:19</p> <p>17 possibly some Sarbanes things were violated by 16:57:26</p> <p>18 Mr. Flatley, and then anyone who would have covered 16:57:33</p> <p>19 up. The wiping of that database broke SEC rules, to 16:57:37</p> <p>20 my knowledge, and anyone that would be involved in 16:57:50</p> <p>21 doing that has violated that law. 16:57:53</p> <p>22 Q. And in your description to Mr. Suraci, you 16:58:00</p> <p>23 indicated that Pioneer had access to the database that 16:58:08</p> <p>24 you felt had been wiped; is that right? 16:58:11</p> <p>25 MR. LEE: Objection to the form of the 16:58:15</p>	<p>1 someone is not cooking the books. 16:59:48</p> <p>2 So, to me, this was an egregious violation of 16:59:50</p> <p>3 the law to alter that database. I don't know who 16:59:55</p> <p>4 could have done it or who did do it, but it behooves 17:00:00</p> <p>5 everyone that I told about this to do something with 17:00:05</p> <p>6 that information, and that's -- that's what I was 17:00:08</p> <p>7 hoping would happen. 17:00:10</p> <p>8 Q. And you say that there was an egregious 17:00:13</p> <p>9 violation of the law to delete the information in the 17:00:16</p> <p>10 database. What -- what law did it violate? 17:00:20</p> <p>11 A. SEC laws. There's supposed to be 17:00:24</p> <p>12 transparency. Because the whole reason that Sarbanes 17:00:31</p> <p>13 was -- was made, was out of the Enron thing where they 17:00:34</p> <p>14 had cooked the books and their -- their stock was not 17:00:36</p> <p>15 worth what everyone thought it was and it devalued the 17:00:41</p> <p>16 stock. So when Enron went belly-up, a lot of people 17:00:46</p> <p>17 lost their pensions and everything from it. 17:00:50</p> <p>18 So Sarbanes was grown out of -- of that 17:00:52</p> <p>19 atmosphere where it made it a -- punishable by 20 17:00:55</p> <p>20 years to destroy documents in -- in a Sarbanes case. 17:00:58</p> <p>21 And those books in a publicly held company are 17:01:03</p> <p>22 regulated by SEC, and they have to report every SEC -- 17:01:09</p> <p>23 to the SEC any violation, which not only did but 17:01:15</p> <p>24 actually could have resulted in -- in somebody 17:01:19</p> <p>25 changing the books of the company. Those have to be 17:01:24</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

62 (Pages 242 to 245)

<p style="text-align: right;">242</p> <p>1 reported by the CFO to the SEC. 17:01:27</p> <p>2 And so this thing that I gave to Mr. Cicero 17:01:31</p> <p>3 should have been reported to the SEC. And he may 17:01:35</p> <p>4 have. It's not his job to tell me about it. But 17:01:38</p> <p>5 that's why I think it's so serious. This is something 17:01:41</p> <p>6 that needed to be reported to the SEC. 17:01:43</p> <p>7 Q. And do you know what, if anything, 17:01:52</p> <p>8 Mr. Cicero did to investigate your concerns about 17:01:54</p> <p>9 Rhode Island Carbide? 17:01:59</p> <p>10 A. He gave me a report at the end that said no 17:02:00</p> <p>11 violations had occurred, which I know could not be 17:02:04</p> <p>12 true based on the evidence he was presenting. 17:02:07</p> <p>13 Q. And why do you feel that way, that it could 17:02:12</p> <p>14 not be true? 17:02:15</p> <p>15 A. He mentioned that he found no evidence of 17:02:16</p> <p>16 bids, of one vendor being favored over another. 17:02:22</p> <p>17 Pioneer was getting \$85,000 a week, and I had a 17:02:27</p> <p>18 representative of MSC saying he was getting \$20,000 a 17:02:32</p> <p>19 year. Rhode Island -- or Pioneer had a 16 percent 17:02:36</p> <p>20 discount and MSC had a 24 percent discount. If you 17:02:41</p> <p>21 just reverse those numbers, they saved nearly half a 17:02:45</p> <p>22 million dollars. So to say that there was not any 17:02:49</p> <p>23 favoritism on vendors, that's false mathematically. 17:02:52</p> <p>24 Secondly, when there's a report of changing the 17:02:57</p> <p>25 database and -- and no conclusion was given on what 17:03:00</p>	<p style="text-align: right;">244</p> <p>1 witnesses for giving, you know, more information than 17:04:45</p> <p>2 I have asked for, but it does take more time, and -- 17:04:49</p> <p>3 and I know he really, after six years, really wants to 17:04:57</p> <p>4 share all of his information with us, but we are, you 17:05:01</p> <p>5 know, not running out of seven hours, but running out 17:05:05</p> <p>6 of time. How do you feel about continuing it, the 17:05:09</p> <p>7 deposition? 17:05:11</p> <p>8 MR. LEE: Well, it's 5:00. And when Earl 17:05:13</p> <p>9 wants to give you an answer, he's going to give you an 17:05:17</p> <p>10 answer, whether you want it or not. 17:05:20</p> <p>11 THE WITNESS: I do apologize for the fact 17:05:26</p> <p>12 that -- we talked about the different buckets. There 17:05:28</p> <p>13 are some of the buckets that I'm more passionate about 17:05:32</p> <p>14 than others. I am somewhat of a Boy Scout and I 17:05:35</p> <p>15 believe certain things should and shouldn't happen. 17:05:39</p> <p>16 And I will, as I said, advocate for and on my behalf, 17:05:42</p> <p>17 and sometimes I get too passionate, so I apologize. 17:05:48</p> <p>18 MS. BERTRAM: That's -- I mean, again, I'm 17:05:52</p> <p>19 not -- I'm not fussing at you at all. I'm just -- I'm 17:05:53</p> <p>20 just stating the reality that it's taking me more time 17:05:55</p> <p>21 to take the deposition because you are expressing your 17:05:59</p> <p>22 passion and providing a lot of information in 17:06:01</p> <p>23 response. 17:06:04</p> <p>24 MR. LEE: Well, it's 5:00 his time, your 17:06:04</p> <p>25 time too, 4:00 our time. Yes, I mean, continue it, 17:06:06</p>
<p style="text-align: right;">243</p> <p>1 occurred, then, basically, that is a false statement 17:03:06</p> <p>2 to say there was nothing. 17:03:09</p> <p>3 And on the third and most important point, I 17:03:10</p> <p>4 had mentioned to him about bids being given to -- that 17:03:13</p> <p>5 were given to Flatley by MSC. He handed those bids to 17:03:21</p> <p>6 Pioneer and Pioneer mailed them to MSC customers in 17:03:26</p> <p>7 order to destroy their business. 17:03:31</p> <p>8 There was a lawsuit that was ensuing, and 17:03:34</p> <p>9 Mr. Cicero mediated in that dispute. So to say that 17:03:37</p> <p>10 no bids were ever given from one company to another, 17:03:42</p> <p>11 he knows that to be a falsehood because he mediated a 17:03:45</p> <p>12 lawsuit or a pending lawsuit between MSC and Pioneer 17:03:48</p> <p>13 whereby Flatley gave a MSC bid to Pioneer, which would 17:03:52</p> <p>14 mean that he was giving favoritism to one and that he 17:03:58</p> <p>15 had given a bid. That violated two of the statements 17:04:03</p> <p>16 within Mr. Cicero's comments. So it's false. I'm 17:04:06</p> <p>17 sorry -- 17:04:16</p> <p>18 Q. You don't know what Mr. Cicero did to 17:04:17</p> <p>19 investigate the -- the concerns about Rhode Island 17:04:19</p> <p>20 Carbide, correct? 17:04:23</p> <p>21 A. I did not then. 17:04:24</p> <p>22 MS. BERTRAM: So, John, you had asked me an 17:04:32</p> <p>23 appropriate question for a Friday afternoon, which is 17:04:36</p> <p>24 how much longer I anticipated being. I'm not being 17:04:38</p> <p>25 critical of Mr. Baker. I'm not one to fuss at 17:04:41</p>	<p style="text-align: right;">245</p> <p>1 and we'll deal with -- well, you're not -- both sides 17:06:10</p> <p>2 are going to have the same -- same issues with respect 17:06:12</p> <p>3 to hours and stuff like that, but we can deal -- we 17:06:14</p> <p>4 don't need to deal with that right now, so ... 17:06:17</p> <p>5 MS. BERTRAM: I've got more than two hours 17:06:19</p> <p>6 of material, and I don't see any reason to keep people 17:06:21</p> <p>7 here past 7:30, 8:00 on a Friday. 17:06:24</p> <p>8 MR. LEE: That's fine. We'll -- we'll get 17:06:27</p> <p>9 a -- we'll get a different date. Just -- this doesn't 17:06:28</p> <p>10 need to be on the record. We can go off the record. 17:06:30</p> <p>11 MS. BERTRAM: Okay. 17:06:30</p> <p>12 MR. LEE: Remember the guy that I told you 17:06:30</p> <p>13 that Earl -- 17:06:30</p> <p>14 THE REPORTER: Counsel, wait. Do you want 17:06:30</p> <p>15 to -- 17:06:30</p> <p>16 MS. BERTRAM: Why don't we close the 17:06:30</p> <p>17 record, give her a chance to close the record. 17:06:41</p> <p>18 VIDEO SPECIALIST: The time is 5:07 p.m. 17:06:41</p> <p>19 We're off the record. 17:06:43</p> <p>20 // 17:06:43</p> <p>21 // 17:06:43</p> <p>22 (The deposition of EARL DONALD BAKER adjourned 17:06:43</p> <p>23 at 5:07 p.m.) 17:06:43</p> <p>24 // 17:06:43</p> <p>25 // 17:06:43</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald

August 14, 2020

63 (Pages 246 to 247)

<div style="text-align: right; margin-bottom: 10px;">246</div> <div style="margin-bottom: 10px;">1       ACKNOWLEDGMENT OF DEPONENT</div> <div style="margin-bottom: 10px;">2</div> <div style="margin-bottom: 10px;">3       I, _____, do hereby</div> <div style="margin-bottom: 10px;">4       acknowledge that I have read and examined the</div> <div style="margin-bottom: 10px;">5       foregoing testimony, and the same is a true, correct</div> <div style="margin-bottom: 10px;">6       and complete transcription of the testimony given by</div> <div style="margin-bottom: 10px;">7       me, and any corrections appear on the attached Errata</div> <div style="margin-bottom: 10px;">8       Sheet signed by me.</div> <div style="margin-bottom: 10px;">9</div> <div style="margin-bottom: 10px;">10      _____</div> <div style="margin-bottom: 10px;">11      (DATE)           (SIGNATURE)</div> <div style="margin-bottom: 10px;">12</div> <div style="margin-bottom: 10px;">13       NOTARIZATION (If Required)</div> <div style="margin-bottom: 10px;">14</div> <div style="margin-bottom: 10px;">15      State of _____</div> <div style="margin-bottom: 10px;">16      County of _____</div> <div style="margin-bottom: 10px;">17</div> <div style="margin-bottom: 10px;">18      Subscribed and sworn to (or affirmed) before me on</div> <div style="margin-bottom: 10px;">19      this _____ day of _____, 20____, by</div> <div style="margin-bottom: 10px;">20      _____, proved to me on the</div> <div style="margin-bottom: 10px;">21      basis of satisfactory evidence to be the person who</div> <div style="margin-bottom: 10px;">22      appeared before me.</div> <div style="margin-bottom: 10px;">23</div> <div style="margin-bottom: 10px;">24      Signature: _____</div> <div style="margin-bottom: 10px;">25                      (Seal)</div>	<div style="text-align: right; margin-bottom: 10px;">247</div> <div style="margin-bottom: 10px;">1       CERTIFICATE OF REPORTER</div> <div style="margin-bottom: 10px;">2       I, Linda S. Kinkade, Registered Diplomate</div> <div style="margin-bottom: 10px;">3       Reporter, Certified Realtime Reporter, Registered</div> <div style="margin-bottom: 10px;">4       Merit Reporter, Registered Professional Reporter,</div> <div style="margin-bottom: 10px;">5       Certified Shorthand Reporter (CA), and officer duly</div> <div style="margin-bottom: 10px;">6       authorized to administer oaths and/or affirmations, do</div> <div style="margin-bottom: 10px;">7       hereby certify that prior to the commencement of</div> <div style="margin-bottom: 10px;">8       examination the deponent herein was duly sworn by me</div> <div style="margin-bottom: 10px;">9       to testify truthfully under penalty of perjury;</div> <div style="margin-bottom: 10px;">10      I FURTHER CERTIFY that the foregoing is a true</div> <div style="margin-bottom: 10px;">11      and accurate transcript of the proceedings as reported</div> <div style="margin-bottom: 10px;">12      by me stenographically, to the best of my ability;</div> <div style="margin-bottom: 10px;">13      I FURTHER CERTIFY that I am neither counsel for</div> <div style="margin-bottom: 10px;">14      nor related to nor employed by any of the parties to</div> <div style="margin-bottom: 10px;">15      this case and have no interest, financial or</div> <div style="margin-bottom: 10px;">16      otherwise, in its outcome.</div> <div style="margin-bottom: 10px;">17      IN WITNESS WHEREOF, I have hereunto set my hand</div> <div style="margin-bottom: 10px;">18      this 23rd day of August 2020.</div> <div style="margin-bottom: 10px;">19</div> <div style="margin-bottom: 10px;">20</div> <div style="margin-bottom: 10px;">21      _____</div> <div style="margin-bottom: 10px;">22      Linda S. Kinkade, RDR CRR RMR RPR CSR</div> <div style="margin-bottom: 10px;">23</div> <div style="margin-bottom: 10px;">24</div> <div style="margin-bottom: 10px;">25</div>
---	--

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



248

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

-----  
EARL DONALD BAKER, :  
 : Civil Action No.  
Plaintiff, :  
 : 3:19-cv-30008-MGM  
vs. :  
 :  
SMITH & WESSON CORP., :  
 :  
Defendant. :  
-----

REMOTE VIDEOTAPED DEPOSITION OF  
EARL DONALD BAKER

Taken by Defendant

September 25, 2020

9:36 A.M. - 5:04 P.M. EASTERN

Reported by: Eileen M. Dunne,  
Court Reporter and  
Notary Public

Baker, Earl Donald - Vol. II

September 25, 2020

2 (Pages 249 to 252)

<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>249</div> <div>APPEARANCES</div> <div>On behalf of the Plaintiff:</div> <div>JOHN LEE, ESQ. Lee &amp; Breen, LLC 188 Industrial Drive Elmhurst, Illinois 60126 (312) 241-1240 Jlee@leebreenlaw.com</div> <div>On behalf of the Defendant:</div> <div>CONNIE N. BERTRAM, ESQ. Bertram LLP 7032 Benjamin St McLean, VA 22101 (703) 627-1649 Cbertram@bertramllp.com</div> <div>Also present: Joe Townsend, videographer</div>
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>250</div> <div>INDEX</div> <div>DEPONENTPAGE</div> <div>Called by the Defendant:</div> <div>EARL DONALD BAKER</div> <div>Examination by Ms. Bertram252</div> <div>EXHIBITS</div> <div>NUMBERDESCRIPTIONPAGE</div> <div>Exhibit 4BText messages403</div>
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>251</div> <div>PROCEEDINGS</div> <div>*****</div> <div>THE VIDEOGRAPHER: Here begins Volume 2 in the videotaped deposition of Earl Donald Baker taken in the matter of Earl Donald Baker v. Smith &amp; Wesson Corporation in the U.S. District Court for the District of Massachusetts, Western Division, Case No. 3:19-cv-30008-MGM.</div> <div>Today's date is September 25th, 2020, and the time is 9:40 A.M. Eastern. This deposition is being conducted remotely. The witness is located at 142 Carolina Avenue in Holden Beach, North Carolina 28462.</div> <div>The court reporter is Eileen Dunne. The videocamera operator is Joe Townsend, myself. Both are on behalf of Henderson Legal Services.</div> <div>Will counsel please introduce themselves and state whom they represent.</div> <div>MR. LEE: John Lee, L-e-e, representing the Plaintiff.</div> <div>MS. BETRAM: Connie Betram representing Smith &amp; Wesson.</div> <div>THE VIDEOGRAPHER: Will the court reporter please swear in the witness after which we can proceed.</div>
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>252</div> <div>EARL DONALD BAKER,</div> <div>being duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:</div> <div>THE DEPONENT: I do.</div> <div>EXAMINATION</div> <div>BY MS. BETRAM:</div> <div>Q. Good morning, Mr. Baker. Again, I'm Connie Betram and I represent Smith &amp; Wesson in the case. Today is the continuation of your deposition and we're going to be using some of the exhibits that I provided to you prior to that -- prior to that deposition. Do you have those with you this morning?</div> <div>A. You provided some at my last deposition. I received no further materials from you.</div> <div>Q. Right. We -- apparently, FedEx misrouted the second set, and they're going to arrive around 10 o'clock this morning. But we're mainly going to be using the exhibits I previously provided to you. So do you have those in front of you?</div> <div>A. I have them.</div> <div>Q. Now, during your prior deposition, we talked about your initial meeting with Mr. Suraci in February of 2014. After that meeting, did you provide to Mr. Suraci some emails with information</div>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald - Vol. II

September 25, 2020

3 (Pages 253 to 256)

<p style="text-align: right;">253</p> <p>1 that you thought was relevant to your concerns?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And did he ask you to draft a summary of</p> <p>4 your concerns that provided all of the details?</p> <p>5 <b>A. I don't remember that specific request. He</b></p> <p>6 <b>may have.</b></p> <p>7 Q. Look at Exhibit 29, and that's not the</p> <p>8 Plaintiff's exhibits, but it's the one that says</p> <p>9 Smith &amp; Wesson Exhibits with the tabs on the side.</p> <p>10 MR. LEE: This is -- Connie, this is part</p> <p>11 of what you sent before? Yeah, I see it now.</p> <p>12 MS. BERTRAM: Yes.</p> <p>13 MR. LEE: Okay, okay.</p> <p>14 THE DEPONENT: What exhibit number?</p> <p>15 BY MS. BERTRAM:</p> <p>16 Q. The bound set.</p> <p>17 <b>A. Okay. What exhibit number?</b></p> <p>18 Q. Twenty-nine. Smith &amp; Wesson.</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. Exhibit 29 is a March 12, 2014 email from</p> <p>21 Ms. Baker to you, correct?</p> <p>22 <b>A. Twenty-nine -- okay. Yeah. The second</b></p> <p>23 <b>page of 29. The first page just says forwarded.</b></p> <p>24 Q. Are you looking at Smith &amp; Wesson exhibits?</p> <p>25 <b>A. It just says Follow up, Flagged on the</b></p>	<p style="text-align: right;">255</p> <p>1 time is 9:51 A.M.</p> <p>2 BY MS. BERTRAM:</p> <p>3 Q. Now, Mr. Baker, if you refer to the first</p> <p>4 page of Exhibit 29, it's a March 12, 2014 email from</p> <p>5 Ms. Baker to you, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And the subject is -- the subject line is</p> <p>8 Information for Ed, correct?</p> <p>9 <b>A. Yes, Information for Ed.</b></p> <p>10 Q. And the remaining pages of the exhibit,</p> <p>11 were those attachments to that -- to that email?</p> <p>12 <b>A. It may have been something I wrote on my</b></p> <p>13 <b>laptop on Word and I had her forward it from home to</b></p> <p>14 <b>my email address.</b></p> <p>15 Q. Okay.</p> <p>16 <b>A. Is what I would surmise.</b></p> <p>17 THE COURT REPORTER: Okay. Could you turn</p> <p>18 up the volume a little bit more or speak a little</p> <p>19 louder?</p> <p>20 THE DEPONENT: Sure.</p> <p>21 THE COURT REPORTER: Thanks.</p> <p>22 BY MS. BERTRAM:</p> <p>23 Q. And -- and you -- you hand -- you provided</p> <p>24 this by hand to Mr. Suraci, correct, this document?</p> <p>25 <b>A. I don't recall how I --</b></p>
<p style="text-align: right;">254</p> <p>1 <b>first page of 29.</b></p> <p>2 Q. I think you might be looking at Exhibit 29</p> <p>3 in the Plaintiff's exhibits. The one that we have --</p> <p>4 <b>A. No. It's Smith &amp; Wesson Exhibit -- Smith &amp;</b></p> <p>5 <b>Wesson Exhibit 29 is M00968. Plaintiff's Exhibit 29</b></p> <p>6 <b>and the first page says all -- no content, just</b></p> <p>7 <b>Follow Up Flag, Flag Status.</b></p> <p>8 Q. Okay. And that is an email from Ms. Baker</p> <p>9 to you dated March 12, 2014, correct?</p> <p>10 <b>A. That's the first page. Do you want me --</b></p> <p>11 <b>the second page --</b></p> <p>12 Q. I'm asking what's on the first page,</p> <p>13 Mr. Baker. Is that what's on the first page?</p> <p>14 <b>A. The second page starts a summary, yes.</b></p> <p>15 Q. I'm asking about the first page -- page,</p> <p>16 Mr. Baker. Is the first page an email from Ms. Baker</p> <p>17 to you dated March 17, 2014 [sic]?</p> <p>18 <b>A. This audio through the phone isn't working.</b></p> <p>19 <b>She just talked and I didn't hear one thing. So we</b></p> <p>20 <b>have to switch to something else. This is not</b></p> <p>21 <b>working.</b></p> <p>22 MS. BERTRAM: Okay. Let's take a break to</p> <p>23 work on the audio.</p> <p>24 (A break was had.)</p> <p>25 THE VIDEOGRAPHER: Back on the record. The</p>	<p style="text-align: right;">256</p> <p>1 Q. Did you --</p> <p>2 THE COURT REPORTER: I'm sorry. I didn't</p> <p>3 hear that.</p> <p>4 <b>A. I don't recall how I delivered it.</b></p> <p>5 Q. And did you provide it to him at some</p> <p>6 point?</p> <p>7 <b>A. Yes. I would -- I would assume.</b></p> <p>8 Q. And you provided it to him on or about</p> <p>9 March 12th of 2014?</p> <p>10 <b>A. I have no idea when I would have report --</b></p> <p>11 <b>given it to him.</b></p> <p>12 Q. Did this document include a description of</p> <p>13 all of your concerns about Pioneer Tool as of</p> <p>14 March 12th, 2014?</p> <p>15 <b>A. I wouldn't characterize any document I had</b></p> <p>16 <b>as being all my concerns, and I wouldn't do so in</b></p> <p>17 <b>this case.</b></p> <p>18 Q. Let me refer you to the last page, which is</p> <p>19 971.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And you said at the end, These are the</p> <p>22 things that I have witnessed, correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And so does this exhibit reflect the things</p> <p>25 that you had witnessed as of March 17 of -- or</p>

Baker, Earl Donald - Vol. II

September 25, 2020

4 (Pages 257 to 260)

<p style="text-align: right;">257</p> <p>1 March 12 of 2014?</p> <p>2 <b>A. They -- they comprise a summary of some of</b></p> <p>3 <b>the things I witnessed, yes.</b></p> <p>4 Q. Let's look at the first one. It relates to</p> <p>5 a company called Pacific. Is that right?</p> <p>6 <b>A. It starts out with Josh Bury, yes.</b></p> <p>7 Q. Okay. And what was your concern with</p> <p>8 respect to Pacific at that time?</p> <p>9 MR. LEE: Objection to the form --</p> <p>10 objection to the form of the question, but you</p> <p>11 may answer.</p> <p>12 <b>A. Can you repeat it?</b></p> <p>13 Q. What was your concern with respect to</p> <p>14 Pacific at that time?</p> <p>15 MR. LEE: Yeah, Earl, as we did it before,</p> <p>16 there's a slight lag technologically.</p> <p>17 THE DEPONENT: Okay.</p> <p>18 MR. LEE: Pause, let me finish my</p> <p>19 objection, and then you can go ahead and answer</p> <p>20 so that we don't talk over each other.</p> <p>21 Okay. So my objection was objection to the</p> <p>22 form, but you may answer.</p> <p>23 THE DEPONENT: Your question is saying what</p> <p>24 problem I had with Pacific. I didn't have a</p> <p>25 problem with Pacific.</p>	<p style="text-align: right;">259</p> <p>1 <b>this issue continually throughout my employment.</b></p> <p>2 Q. And was this the first time that you had</p> <p>3 raised this concern with human resources?</p> <p>4 <b>A. No.</b></p> <p>5 Q. When before March 12th did you raise this</p> <p>6 concern?</p> <p>7 <b>A. Many times with Ann Glica, Kathy Salvador.</b></p> <p>8 <b>I had raised it with Mr. Flatley. I'd raised it a</b></p> <p>9 <b>number of times. It's hard to tell over a year's</b></p> <p>10 <b>time how many people I talked to.</b></p> <p>11 Q. And did you do any type of investigation</p> <p>12 of -- of this concern?</p> <p>13 <b>A. Yes. I talked to some people about it.</b></p> <p>14 Q. Who did you speak with?</p> <p>15 <b>A. Andrew Dziobek. He was our purchaser.</b></p> <p>16 Q. Did you do anything else to investigate the</p> <p>17 situation?</p> <p>18 <b>A. Not that I can think of off the top of my</b></p> <p>19 <b>head.</b></p> <p>20 Q. And when did you talk -- talk with Andrew</p> <p>21 Dziobek?</p> <p>22 <b>A. It would have been probably in April.</b></p> <p>23 Q. Of 2013?</p> <p>24 <b>A. 2013. And then ongoing. This became an</b></p> <p>25 <b>ongoing issue all the way up through the whole time I</b></p>
<p style="text-align: right;">258</p> <p>1 BY MS. BETRAM:</p> <p>2 Q. Okay. My question is why did you</p> <p>3 summarize -- you said that -- on the last page that</p> <p>4 these were "things that I have witnessed." Why did</p> <p>5 you include this paragraph concerning Pacific in your</p> <p>6 summary?</p> <p>7 <b>A. The problem brought forth in that first</b></p> <p>8 <b>paragraph is that -- not a problem with Pacific.</b></p> <p>9 <b>It's a problem with our purchasing decision to pay</b></p> <p>10 <b>330 for an inferior product, 330 to 440 for tools</b></p> <p>11 <b>that I was getting from -- or that Smith &amp; Wesson was</b></p> <p>12 <b>getting from Pacific for 189 that performed</b></p> <p>13 <b>perfectly.</b></p> <p>14 <b>So the problem is we made a purchasing</b></p> <p>15 <b>decision to pay in some case more than double for a</b></p> <p>16 <b>tool that performed inferiorly.</b></p> <p>17 Q. And how did you become aware of the</p> <p>18 situation?</p> <p>19 <b>A. Josh Bury, and his -- his lead person,</b></p> <p>20 <b>James, approached me with this information.</b></p> <p>21 Q. When did they approach you?</p> <p>22 <b>A. Many times. So I would imagine it was</b></p> <p>23 <b>fairly early on that they spoke with me. I would say</b></p> <p>24 <b>it would probably be in April of 2013 was the first</b></p> <p>25 <b>time they talked to me, and they talked with me on</b></p>	<p style="text-align: right;">260</p> <p>1 <b>was there.</b></p> <p>2 Q. And do you recall anything that Andrew told</p> <p>3 you about your concerns?</p> <p>4 <b>A. He told me that, yes, in fact, they were</b></p> <p>5 <b>paying 189 and that when the requisitions came to</b></p> <p>6 <b>him, it was switched over to -- that the initial</b></p> <p>7 <b>requisition was for Pioneer but it had been switched</b></p> <p>8 <b>over to Pioneer and he was just fulfilling the</b></p> <p>9 <b>requisition as it was presented to him.</b></p> <p>10 Q. Now, I think you may have misspoken. Did</p> <p>11 you -- you said the initial requisition was for</p> <p>12 Pioneer Tool and then it was switched over to Pioneer</p> <p>13 Tool. Did you mean Pacific?</p> <p>14 <b>A. Yes. Thank you.</b></p> <p>15 Q. And did he say when that happened?</p> <p>16 <b>A. No. He was nonspecific.</b></p> <p>17 Q. And did you do anything -- other than</p> <p>18 speaking with Andrew Dziobek over a period of time,</p> <p>19 did you do anything else to investigate this</p> <p>20 situation?</p> <p>21 <b>A. Andrew approached me about bringing Pacific</b></p> <p>22 <b>to our facility. And the owner and his assistant</b></p> <p>23 <b>flew in from Oregon and they spent a number of days;</b></p> <p>24 <b>I can't recall how many. And that -- that helped our</b></p> <p>25 <b>investigation into their company as a supplier.</b></p>

Baker, Earl Donald - Vol. II

September 25, 2020

5 (Pages 261 to 264)

<p style="text-align: right;">261</p> <p>1 Q. Okay. And did the company start purchasing</p> <p>2 tools from Pacific after the -- after that meeting?</p> <p>3 <b>A. We had been purchasing on a piecemeal</b></p> <p>4 <b>basis. When Pioneer could not perform, we would</b></p> <p>5 <b>order tools from them throughout our time there. But</b></p> <p>6 <b>it was on a one- and two-piece basis.</b></p> <p>7 Q. Right. Did the -- did the purchasing</p> <p>8 increase after they came to the facility for the</p> <p>9 meeting?</p> <p>10 <b>A. I don't believe so.</b></p> <p>11 Q. Okay. And you said that you raised these</p> <p>12 concerns with Larry Flatley, Ann Glica, and Kathy</p> <p>13 Salvador. Do you recall what you told them about the</p> <p>14 situation?</p> <p>15 <b>A. Just what I'm telling you and what's</b></p> <p>16 <b>written.</b></p> <p>17 Q. Do you recall providing any documentation</p> <p>18 to them to support your concerns or to -- that they</p> <p>19 could consider in addressing your concerns?</p> <p>20 <b>A. They didn't ask for any and I did not</b></p> <p>21 <b>provide any that I can recall.</b></p> <p>22 Q. Is it fair to say that Exhibit 29 fully --</p> <p>23 fully describes your concerns with respect to the</p> <p>24 purchasing of Pioneer Tools over Pacific Tools?</p> <p>25 MR. LEE: Objection to the form of the</p>	<p style="text-align: right;">263</p> <p>1 <b>A. From April of 2013 through June of 2014.</b></p> <p>2 Q. Do you recall any of the documents that you</p> <p>3 provided to them?</p> <p>4 MR. LEE: Objection to the form of the</p> <p>5 question, but you may answer.</p> <p>6 <b>A. I -- I can recall many documents. There</b></p> <p>7 <b>were many documents. And we have a quite extensive</b></p> <p>8 <b>record of my emails and documents I provided. And I</b></p> <p>9 <b>would just refer to those.</b></p> <p>10 Q. And do you know whether the company ever</p> <p>11 investigated or looked into your concerns regarding</p> <p>12 purchasing from Pacific?</p> <p>13 <b>A. My role as a -- as a person that cared</b></p> <p>14 <b>about Smith &amp; Wesson was to bring to their attention</b></p> <p>15 <b>the problems I saw. I did not feel it was my duty,</b></p> <p>16 <b>nor do I feel that they felt it was their duty to</b></p> <p>17 <b>inform me what they were investigating and were not</b></p> <p>18 <b>investigating. So I had no scope of what they were</b></p> <p>19 <b>doing on their end.</b></p> <p>20 Q. So if they did an investigation, you don't</p> <p>21 know what they did or what they concluded, right?</p> <p>22 <b>A. I was provided an investigation report at</b></p> <p>23 <b>the end with Mr. Cicero. So that would indicate they</b></p> <p>24 <b>had done an investigation, but other than that poorly</b></p> <p>25 <b>worded statement, I had no indication that they had</b></p>
<p style="text-align: right;">262</p> <p>1 question. Misstates the witness's prior</p> <p>2 testimony, but you may answer.</p> <p>3 <b>A. As I previously stated, no document that I</b></p> <p>4 <b>know of fully comprises all of my concerns.</b></p> <p>5 Q. Is there any information that you provided</p> <p>6 to Smith &amp; Wesson other than what is summarized in</p> <p>7 paragraph 1 of Exhibit 29 that you recall providing</p> <p>8 to the company?</p> <p>9 MR. LEE: Objection to the --</p> <p>10 <b>A. Yes.</b></p> <p>11 MR. LEE: Objection to the form of the</p> <p>12 question, but you may answer.</p> <p>13 <b>A. Yes, I provided many documents.</b></p> <p>14 Q. Do you recall which documents you provided?</p> <p>15 <b>A. Many.</b></p> <p>16 Q. Do you recall any of them? What -- what --</p> <p>17 let me just go back.</p> <p>18 To whom did you provide documents relating</p> <p>19 to the situation with Pacific?</p> <p>20 <b>A. Tom Walsh, Bob O'Donnell, Josh Bury, James</b></p> <p>21 <b>Peele. And those are some I can recall. There may</b></p> <p>22 <b>be others. But off the top of my head, that's the</b></p> <p>23 <b>ones I can think of.</b></p> <p>24 Q. And during what period did you provide</p> <p>25 documents to them relating to this concern?</p>	<p style="text-align: right;">264</p> <p>1 <b>done some -- some investigation.</b></p> <p>2 Q. Now, did you consider the situation with --</p> <p>3 let me back up a little bit.</p> <p>4 Is it your -- is it your view that by</p> <p>5 purchasing tools from Pioneer as opposed to Pacific</p> <p>6 that Smith &amp; Wesson was violating Sarbanes-Oxley?</p> <p>7 MR. LEE: Objection to the form of the</p> <p>8 question, but you may answer.</p> <p>9 <b>A. We had millions of dollars of purchases.</b></p> <p>10 <b>Not every purchase would fall under that category.</b></p> <p>11 <b>There are some purchases that would fall into the</b></p> <p>12 <b>category of being contrary to the interests of Smith</b></p> <p>13 <b>&amp; Wesson that were purchased from Pioneer.</b></p> <p>14 Q. Again, is it your view that the purchasing</p> <p>15 of tools from Pioneer Tool over Pacific was one of</p> <p>16 those purchases that was a violation of</p> <p>17 Sarbanes-Oxley?</p> <p>18 MR. LEE: Same -- same objection, but you</p> <p>19 may answer.</p> <p>20 <b>A. It's possible that those were motivated by</b></p> <p>21 <b>external motivations other than the best interests of</b></p> <p>22 <b>Smith &amp; Wesson.</b></p> <p>23 Q. And why do you think it's possible that</p> <p>24 they were motivated by external interests?</p> <p>25 <b>A. Having owned a business for 22 years, it's</b></p>

<p style="text-align: right;">265</p> <p>1 <b>contrary to popular business practices to pay double</b>  2 <b>for a product that is far inferior and has a slower</b>  3 <b>delivery time. It does not seem on the surface to be</b>  4 <b>motivated simply by what's best for the company.</b>  5 Q. Are you aware of any statements by anyone  6 at Smith &amp; Wesson that would support your belief that  7 it's possible that there were external motivate --  8 let me strike that and start over.  9 Are you -- can you point to any statement  10 by any representative of Smith &amp; Wesson that supports  11 your view that it's possible that there were  12 motivations, external motivations?  13 MR. LEE: Objection to the form of the  14 question. Misstates the -- the witness's prior  15 testimony, but you may answer.  16 <b>A. Yes, there were many.</b>  17 Q. Specific as to purchasing -- not purchasing  18 from Pacific, are you aware of any statements?  19 <b>A. Yes.</b>  20 Q. What statements can you point to to -- to  21 support your suggestion that there were elicit  22 motivations with reference to Pacific?  23 MR. LEE: Objection to form, but you may  24 answer.  25 <b>A. Again, there are a multitude of statements.</b></p>	<p style="text-align: right;">267</p> <p>1 to summarize in -- in one sitting.  2 Again, I would refer to the documentation  3 of the emails that we sent to Mr. Suraci as being  4 more of a complete -- a complete answer to your  5 question.  6 BY MS. BETRAM:  7 Q. You said that there were statements. First  8 of all, you first indicated that there was a  9 statement by Rob Cicero, Where there is smoke, there  10 is fire. Was that statement specific to Pacific or  11 about vendors generally?  12 MR. LEE: Objection to the form of the  13 question. Misstates the witness's prior  14 testimony, but you may answer.  15 <b>A. I believe you misstated or I did. I didn't</b>  16 <b>say Mr. Cicero. I said Mr. Suraci said that.</b>  17 Q. Okay. I -- I probably just misheard you.  18 I apologize.  19 When Mr. Ed --- Mr. Suraci made that  20 statement, do you know whether he was referring to  21 Pacific in particular or to the vendor policy in  22 general?  23 <b>A. I -- I couldn't say what he was referring</b>  24 <b>to.</b>  25 Q. With respect to Mr. Peele, Mr. Valley, Mr.</p>
<p style="text-align: right;">266</p> <p>1 <b>So my answer to this question by no means embodies</b>  2 <b>everything that was said to me. It's just what I can</b>  3 <b>think of off the top of my head.</b>  4 <b>Mr. Suraci, in presenting the evidence to</b>  5 <b>me, told me personally, Where there's smoke, there's</b>  6 <b>fire, and I believe there's definitely fire here. So</b>  7 <b>that statement belied the fact that he believed there</b>  8 <b>were motivators outside of -- motivations outside the</b>  9 <b>best interests of Smith &amp; Wesson.</b>  10 <b>Now, James Peele --</b>  11 THE COURT REPORTER: Motivations outside  12 what?  13 THE DEPONENT: That there were motivations  14 outside the best interests of Smith &amp; Wesson.  15 THE COURT REPORTER: Thank you.  16 THE DEPONENT: James Peele mentioned many  17 instances -- instances where he had felt it was  18 being -- his department was being hampered by the  19 purchasing policies and that his requisitions  20 were being crossed out and Pioneer was put in  21 place of the actual provider he wished to receive  22 the tools from.  23 Josh Bury mentioned things. Jim Valley  24 mentioned issues of his purchasing. Tom Walsh  25 mentioned concerns. And it's just like too many</p>	<p style="text-align: right;">268</p> <p>1 Bury and Mr. Walsh, were any of their statements  2 specific to Pacific?  3 <b>A. I believe Mr. Peele, Mr. Bury, and possibly</b>  4 <b>Mr. Walsh were in the context of Pacific.</b>  5 Q. Okay. And do you recall any of the  6 specific statements that they've made with respect to  7 Pacific?  8 <b>A. As far as word for word, I do not.</b>  9 Q. Do you recall generally any of the  10 statements that they made concerning Pacific?  11 <b>A. Yes. They said that their -- Pacific's</b>  12 <b>work better. When Thompson/Center was brought --</b>  13 <b>bought by Smith &amp; Wesson, they used exclusively</b>  14 <b>Pacific and they had been switched over on their</b>  15 <b>requisitions to Pioneer and they performed -- did not</b>  16 <b>perform as well. We had documented problems with</b>  17 <b>them, documented through the emails you've been</b>  18 <b>provided. And you can see by the prices listed in</b>  19 <b>Exhibit 29 that we were paying in some cases more</b>  20 <b>than double.</b>  21 Q. When was Thompson/Center purchased by Smith  22 &amp; Wesson?  23 <b>A. I do not know.</b>  24 Q. And Pacific is a -- a manufacturer; is that  25 right?</p>



Baker, Earl Donald - Vol. II

September 25, 2020

7 (Pages 269 to 272)

<p style="text-align: right;">269</p> <p>1 <b>A. Yes, I would say.</b></p> <p>2 Q. Okay. And do they distribute their own</p> <p>3 tools or do they sell through a distributor?</p> <p>4 <b>A. No, they -- they sold directly to us. I</b></p> <p>5 <b>don't know their relationships with other companies.</b></p> <p>6 Q. Okay. And the tools that were provided by</p> <p>7 Pioneer Tool, were they -- were they manufactured by</p> <p>8 Pioneer Tool or another manufacturer?</p> <p>9 <b>A. I am not positive, but it's my recollection</b></p> <p>10 <b>that they were produced by an outside supplier and</b></p> <p>11 <b>sub -- subcontracted to an outside supplier by</b></p> <p>12 <b>Pioneer.</b></p> <p>13 Q. Now, was Thompson/Center purchased before</p> <p>14 you started working at Smith &amp; Wesson?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Do you know how many years it was before</p> <p>17 you were -- before you started working for the</p> <p>18 company?</p> <p>19 MR. LEE: Objection to form. Asked and</p> <p>20 answered. Calls for speculation. But if you</p> <p>21 can, you may answer.</p> <p>22 <b>A. As I answered before, I -- I do not know</b></p> <p>23 <b>when they were purchased.</b></p> <p>24 Q. But it was your understanding that the</p> <p>25 purchasing policy changed around the time of the</p>	<p style="text-align: right;">271</p> <p>1 <b>price, delivery, and quality -- making those</b></p> <p>2 <b>assessments, we would not have made many of the</b></p> <p>3 <b>purchases that Smith &amp; Wesson made.</b></p> <p>4 Q. And you indicate that there were -- that --</p> <p>5 that individuals may have been motivated by external</p> <p>6 interests. Who do you claim was improperly</p> <p>7 motivated; which individuals with respect to Pacific?</p> <p>8 <b>A. You -- you infer that I made judgments as</b></p> <p>9 <b>to who the parties were that may have been improperly</b></p> <p>10 <b>influenced. My -- my goal in bringing this to</b></p> <p>11 <b>management isn't to impose my beliefs on them, but</b></p> <p>12 <b>just to communicate facts that I see and</b></p> <p>13 <b>conversations and things that were told to me.</b></p> <p>14 <b>I was told specifically that individuals</b></p> <p>15 <b>were involved. I passed that information on to -- to</b></p> <p>16 <b>my bosses and in some cases even to some of the</b></p> <p>17 <b>people that later were implicated by things that I</b></p> <p>18 <b>was told. So I just did my best to do what was best</b></p> <p>19 <b>for Smith &amp; Wesson.</b></p> <p>20 Q. And who do you think were improperly</p> <p>21 motivated by external interests?</p> <p>22 <b>A. You're asking for my opinion?</b></p> <p>23 Q. In -- in your view, who do you contend were</p> <p>24 motivated by improper external influences?</p> <p>25 MR. LEE: Object to the form of the</p>
<p style="text-align: right;">270</p> <p>1 purchase of Thompson Center based on the information</p> <p>2 that was provided to you?</p> <p>3 MR. LEE: Objection to the form of the</p> <p>4 question, but if you know the answer, you can</p> <p>5 answer.</p> <p>6 <b>A. I know that the policy changed. I do not</b></p> <p>7 <b>know the timing of when it changed.</b></p> <p>8 Q. Okay. And we were talking -- you indicated</p> <p>9 that you felt that the decision, this change, may</p> <p>10 have been motivated by external interests. And we</p> <p>11 talked about some of the people who made statements</p> <p>12 to you. Are you aware of any other evidence that</p> <p>13 supports your statement that it's possible that the</p> <p>14 purchasing decisions were motivated by external</p> <p>15 interests?</p> <p>16 MR. LEE: Objection to the form of the</p> <p>17 question, but you may answer.</p> <p>18 <b>A. As I said before, we -- we have quite a few</b></p> <p>19 <b>documents in this -- this case, many of which speak</b></p> <p>20 <b>to your question that there are many evidences that</b></p> <p>21 <b>would point to outside influences. From my business</b></p> <p>22 <b>practice and my schooling, I believe that price,</b></p> <p>23 <b>delivery, and quality are the major factors involved</b></p> <p>24 <b>in procuring something for the best interests of your</b></p> <p>25 <b>company. Looking at those three items alone --</b></p>	<p style="text-align: right;">272</p> <p>1 question. Asked and answered. But if you can,</p> <p>2 you may answer.</p> <p>3 <b>A. Again, my -- my view wasn't to -- to</b></p> <p>4 <b>investigate to the point of finding out who might be</b></p> <p>5 <b>profiting or what motivations might be involved. My</b></p> <p>6 <b>focus was purely on tooling procurement, which was my</b></p> <p>7 <b>department, that I felt like there are some forces</b></p> <p>8 <b>below the surface that are motivating these purchases</b></p> <p>9 <b>that are not -- clearly not in the interests of Smith</b></p> <p>10 <b>&amp; Wesson and that it behooved management to do the</b></p> <p>11 <b>investigation to find out why those purchases were</b></p> <p>12 <b>made in the manner they were.</b></p> <p>13 <b>So, again, though I might have inclinations</b></p> <p>14 <b>by certain things that I witnessed every day, my</b></p> <p>15 <b>focus wasn't on who was -- who was profiting and who</b></p> <p>16 <b>was changing things; more so just to make sure that</b></p> <p>17 <b>if the practice stopped and we started purchasing in</b></p> <p>18 <b>the best interests of Smith &amp; Wesson, my job is done.</b></p> <p>19 Q. What were the -- in your view, what</p> <p>20 external interests were motivating the individuals</p> <p>21 with respect to purchasing Pioneer over Pacific?</p> <p>22 <b>A. I think Smith &amp; Wesson had a pay-to-play</b></p> <p>23 <b>society where gifts were being given. I had told</b></p> <p>24 <b>Mr. Cicero about TVs being delivered to individuals.</b></p> <p>25 <b>I made a lot of submissions that talked of different</b></p>

<p style="text-align: right;">273</p> <p>1 gifts to different people. We spoke of baseball  2 tickets being sent to me and gave them to Mr. -- or  3 gave an account of that and a gift card to Mr. Suraci  4 and told all of it to Mr. Cicero.</p> <p>5 Q. Did you present any other evidence to  6 support your belief that there were improper external  7 motivations for the purchasing decisions?</p> <p>8 A. Yes.</p> <p>9 MR. LEE: Objection to the form of the  10 question, but you may answer.</p> <p>11 A. Yes, many.</p> <p>12 Q. What other evidence?</p> <p>13 A. Well, I --</p> <p>14 MR. LEE: Objection -- well, objection to  15 the form of the question, but you may answer.</p> <p>16 A. I gave accounts of -- direct accounts of  17 what people told me. I also told Kathy Salvador and  18 Ann Glica of an interaction with a Pioneer driver who  19 attempted to deliver a gift to Mr. Flatley. He said  20 so. And it was -- now, I did not see him take that,  21 but coupled with the comments that were made by  22 Mr. Flatley just days before that they would get  23 preferential treatment at a drawing during the time  24 of EASTEC, that the significance in mentioning it was  25 it showed a quid pro quo between gifts and</p>	<p style="text-align: right;">275</p> <p>1 while other vendors did.</p> <p>2 Q. Other than gifts and the failure to provide  3 refunds, is there any other evidence that you can  4 point to to support your assertion that there were  5 improper motivations with respect to purchasing from  6 Pioneer over Pacific?</p> <p>7 A. There are -- I had mentioned some specific.  8 There are also -- those are micro, and there are also  9 macro evidences that would indicate that the  10 purchases even from a far view don't pass the smell  11 test.</p> <p>12 When -- as Mr. Smith mentions that Pioneer  13 was offering a 16 percent discount and that MSC,  14 which had a larger capacity to deliver quicker had a  15 24 percent discount, it does not pass the smell test  16 that given the numbers I was provided, which I have  17 no way of attesting to whether they're correct or  18 not, that \$4.4 million in business was given to the  19 company that had the smaller discount and that at the  20 time I arrived, I was told that MSC was receiving  21 \$20,000 a year in purchases where if you just do the  22 simple math, they would save nearly a half million  23 dollars by switching their purchases to the entity  24 that had the largest discount.</p> <p>25 That's against every business practice that</p>
<p style="text-align: right;">274</p> <p>1 Mr. Flatley's comment to me that because we were the  2 higher ranking Smith &amp; Wesson people, we would  3 receive gifts.</p> <p>4 Q. Other than the quid pro quo between gifts  5 and purchasing, are you aware of any other evidence  6 that supports your view that there were inappropriate  7 or -- let me strike that.</p> <p>8 Other than the kid -- quid pro -- quid pro  9 quo environment where employees were given gifts, can  10 you point to any other evidence that supports your  11 view that employees were motivated by external  12 forces?</p> <p>13 MR. LEE: Objection to the form of the  14 question, but you may answer.</p> <p>15 A. Again, we -- I point to the email record  16 that we have that document many, many incidences  17 where purchases and/or times when there should have  18 been refunds to Smith &amp; Wesson for poor quality,  19 incorrect delivery that should have been refunded  20 back to Smith &amp; Wesson that were not.</p> <p>21 So it's not just purchases. It's  22 everything having to do with the -- the purchase,  23 value stream where you buy and you receive what you  24 had requisitioned. And -- and in many cases, we did  25 not ask for certain vendors to pay for their mistakes</p>	<p style="text-align: right;">276</p> <p>1 I know of. And that corroborated with testimony of  2 the micro infractions that I talked about from  3 Mr. Valley, Mr. Bury, Mr. Peele, and the things that  4 I heard.</p> <p>5 Q. Are you aware --</p> <p>6 THE VIDEOGRAPHER: I'm sorry to --</p> <p>7 BY MS. BETRAM:</p> <p>8 Q. -- of any other --</p> <p>9 THE VIDEOGRAPHER: -- sorry to interrupt.</p> <p>10 This is the videographer. Mr. Baker, could you  11 just tilt your laptop screen down a little bit so  12 you'll be more centered? Thank you.</p> <p>13 BY MS. BETRAM:</p> <p>14 Q. Are you aware of any other evidence that  15 supports your contention that Smith &amp; Wesson  16 employees were motivated by inappropriate external  17 influences?</p> <p>18 A. Again, I'd point to the -- to the record of  19 the documents we have.</p> <p>20 Q. Anything else that you can recall as you're  21 sitting here today?</p> <p>22 A. You're -- you're asking me to recall to  23 memory some 2,000 documents. While I can speak with  24 specificity to -- to many, if not all, of those  25 documents, for me to recall by memory all thousands</p>

Baker, Earl Donald - Vol. II

September 25, 2020

9 (Pages 277 to 280)

<p style="text-align: right;">277</p> <p>1 of documents to tell you for this answer, it's</p> <p>2 impossible. Beyond my scope.</p> <p>3 Q. Let's go to the second paragraph. It talks</p> <p>4 about Hassay Savage; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And there were certain -- there were three</p> <p>7 different brochures that you were looking into; is</p> <p>8 that right?</p> <p>9 A. Yes, that's correct.</p> <p>10 Q. And you talk about filling out a -- a</p> <p>11 Kaizen sheet showing how much was saved. Do you have</p> <p>12 that Kaizen sheet?</p> <p>13 A. That Kaizen sheet was filled out by Andrew</p> <p>14 Dziobek, and I do not have that.</p> <p>15 Q. Okay.</p> <p>16 A. Andrew -- Andrew would have that.</p> <p>17 Q. And the company ended up purchasing from</p> <p>18 Hassay Savage; isn't that right?</p> <p>19 A. What time do you mean?</p> <p>20 Q. After -- there's some email communications,</p> <p>21 and the company, while you were employed there, did</p> <p>22 -- did make purchases from Hassay Savage, right?</p> <p>23 A. They were the main supplier before -- on</p> <p>24 brochures before we switched to Pioneer. So they were</p> <p>25 -- we purchased from them prior, and then after this,</p>	<p style="text-align: right;">279</p> <p>1 Mr. Dziobek were negotiating the terms back and</p> <p>2 forth. The initial price at that time for these</p> <p>3 brochures was \$770. Mr. Cicero has argued that that</p> <p>4 pricing is incorrect. But that pricing fluctuated.</p> <p>5 Pioneer lowered their bid as soon as we got the bid</p> <p>6 from Hassay. They then lowered it again once they</p> <p>7 found out that it was going to be dual -- I'm sorry.</p> <p>8 They increased it again after they found that it was</p> <p>9 dual sourced.</p> <p>10 So he can say the price was 500 and</p> <p>11 whatever. The fact remains that at the point that</p> <p>12 this was initiated, they were charging 770 for that</p> <p>13 broach. We quote a quote from Hassay Savage for 398.</p> <p>14 There were -- there were definite influences that</p> <p>15 came to bear to make sure it was dual sourced, and</p> <p>16 they weren't based in truth.</p> <p>17 Q. What was the basis for the 770 number that</p> <p>18 you just identified?</p> <p>19 A. That's what it showed on the computer at</p> <p>20 the time we got the bid from Hassay Savage.</p> <p>21 Q. And which computer are you talking about?</p> <p>22 A. The computer in my office, the main</p> <p>23 database, SAP.</p> <p>24 Q. And you said that Carl Hynes -- that you</p> <p>25 spoke with Carl Hynes about this. What did he tell</p>
<p style="text-align: right;">278</p> <p>1 we purchased from them on a small scale.</p> <p>2 Q. And you said before they were switched</p> <p>3 over -- let me just strike that.</p> <p>4 When did they stop becoming the main</p> <p>5 vendor?</p> <p>6 A. I am unaware of the time frame.</p> <p>7 Q. Was it before your employment?</p> <p>8 A. Yes.</p> <p>9 Q. And with respect to the three brochures,</p> <p>10 they were dual sourced between Pioneer Tool and</p> <p>11 Hassay, correct?</p> <p>12 A. When I brought -- not when I re -- I</p> <p>13 started there, no.</p> <p>14 Q. After the email communications that you</p> <p>15 describe in this paragraph, they were dual sourced,</p> <p>16 correct?</p> <p>17 A. For a time.</p> <p>18 Q. You raised concerns -- was it your concern</p> <p>19 that Mr. Flatley had provided the Hassay Savage quote</p> <p>20 numbers to Pioneer Tool?</p> <p>21 A. I was told so.</p> <p>22 Q. Who told you that?</p> <p>23 A. Carl Hynes from Pioneer.</p> <p>24 Q. And when did he tell you that?</p> <p>25 A. During the time of the -- Mr. Flatley and</p>	<p style="text-align: right;">280</p> <p>1 you?</p> <p>2 A. He told me, yes, Flatley did give him the</p> <p>3 amount of Hassay's bid and that's why he bid the</p> <p>4 dollar less. But as the negotiations increased, he</p> <p>5 changed his bid once he realized that he was</p> <p>6 virtually guaranteed half of the order by Flatley</p> <p>7 that he raised his price because he was going to lose</p> <p>8 money at the dollar -- dollar a broach over what</p> <p>9 Hassay Savage bid.</p> <p>10 Q. And when did -- when did Mr. Hynes tell you</p> <p>11 this?</p> <p>12 A. At the time that that negotiation was going</p> <p>13 on.</p> <p>14 Q. And did you provide that information to</p> <p>15 Mr. Cicero?</p> <p>16 A. Yes, I did.</p> <p>17 Q. And do you know whether Mr. Cicero spoke</p> <p>18 with Mr. Hynes?</p> <p>19 A. No, I do not.</p> <p>20 Q. For his investigation?</p> <p>21 A. No, I do not.</p> <p>22 Q. And do you know what Mr. Hynes said to</p> <p>23 Mr. Cicero, you know what I -- you don't know what</p> <p>24 Mr. Hynes said to Mr. Cicero if they spoke, correct?</p> <p>25 A. No.</p>

Baker, Earl Donald - Vol. II

September 25, 2020

10 (Pages 281 to 284)

<p style="text-align: right;">281</p> <p>1 Q. And what -- the conversation with</p> <p>2 Mr. Hynes, was that a telephone call or an in-person</p> <p>3 discussion?</p> <p>4 A. In person in my office.</p> <p>5 Q. Okay. Was anybody else there?</p> <p>6 A. Mike Jurga may have been involved, but I --</p> <p>7 I don't know if he was or not.</p> <p>8 Q. Okay. And did you document your discussion</p> <p>9 with Mr. Hynes; did you take notes?</p> <p>10 A. I was standing inside the door of my</p> <p>11 office. I -- I did not have the ability to take</p> <p>12 notes at that time. Mr. Hynes was standing and I was</p> <p>13 standing. We were off to the left of my office. I'm</p> <p>14 not sure if Mike Jurga was sitting in the chairs of</p> <p>15 my office. It's my recollection he may have. But I</p> <p>16 did document by telling Mr. Cicero and Mr. Suraci.</p> <p>17 And I think you'll find that I have email</p> <p>18 records to Mr. Suraci explaining the situation to</p> <p>19 him. He was HR, so he didn't understand purchasing</p> <p>20 much, so I think there is a detailed explanation of</p> <p>21 how the process went to him.</p> <p>22 Q. So you said that you had the conversation</p> <p>23 with Mr. Hynes. You looked at the price within the</p> <p>24 SAP. Did you do anything else to investigate your</p> <p>25 concerns about purchasing from Pioneer or the bidding</p>	<p style="text-align: right;">283</p> <p>1 Q. And what documents did you show them?</p> <p>2 A. You have copies of all of them. There's</p> <p>3 quite an extensive email record of what we -- I gave</p> <p>4 them. And some things that weren't document -- or</p> <p>5 were not emails that were items like gift cards or</p> <p>6 baseball tickets, they were provided with other</p> <p>7 evidences other than emails, but they're referred to</p> <p>8 in the emails.</p> <p>9 Q. I'm talking about the -- the situation with</p> <p>10 Hassay Savage and the -- and the -- and the pricing</p> <p>11 and dual sourcing other than your conversation with</p> <p>12 Karl Hynes and the price in SAP. Did you -- and some</p> <p>13 emails. Did you provide any other documents or</p> <p>14 information to Mr. Cicero or Mr. Suraci?</p> <p>15 A. Other information other than what I told</p> <p>16 them? No, I gave them my information. A lot of it</p> <p>17 was verbal and others were emails.</p> <p>18 Q. And do you know what Mr. Cicero or</p> <p>19 Mr. Suraci did in connection with their</p> <p>20 investigations with respect to the Hassay Savage</p> <p>21 issue?</p> <p>22 A. I was provided information in Mr. Cicero's</p> <p>23 investigation report claiming that I was incorrect on</p> <p>24 certain issues. But he was misinformed. He had not</p> <p>25 researched diligently enough to have a good scope of</p>
<p style="text-align: right;">282</p> <p>1 by Pioneer -- let me just strike that.</p> <p>2 Did you do anything else to investigate</p> <p>3 your concerns about Hassay Savage?</p> <p>4 A. Again, it's not my view that it's my role</p> <p>5 in having concerns for my company to be the sole</p> <p>6 investigator for what was going on within the</p> <p>7 company. I trusted those within the company to do</p> <p>8 their job as well. It was my job to -- to point out</p> <p>9 to them there was something that was not being done</p> <p>10 correctly or in the best interests of Smith &amp; Wesson.</p> <p>11 And I trusted people to do their job to investigate.</p> <p>12 I didn't feel -- my job was to make sure that my</p> <p>13 department produced and that -- that was the things I</p> <p>14 was hired for. I wasn't hired to investigate</p> <p>15 impropriety. That's what HR, legal, and Mr. Suraci</p> <p>16 were tasked to do.</p> <p>17 Q. Did you provide any other information to</p> <p>18 Mr. Cicero or Mr. Suraci other than your conversation</p> <p>19 with Carl Hynes and the price that you identified in</p> <p>20 SAP?</p> <p>21 A. I did many things. I showed them</p> <p>22 documents. I gave them things. So you're asking did</p> <p>23 I do anything than -- other than tell them. Yes, I</p> <p>24 did everything I could to make sure they had the</p> <p>25 information.</p>	<p style="text-align: right;">284</p> <p>1 what he was even saying.</p> <p>2 Q. And what leads you to believe that he</p> <p>3 hadn't researched diligently?</p> <p>4 A. He said he had in that investigation</p> <p>5 report, but by virtue of the context -- or content of</p> <p>6 what he said, he hadn't -- obviously, he didn't</p> <p>7 research enough.</p> <p>8 Q. And what -- what specifically do you</p> <p>9 contend he did not research sufficiently?</p> <p>10 A. He gave the price like a picture in a</p> <p>11 moment of time and said, No, it was this. Well, that</p> <p>12 wasn't -- that price was up here, went down, went</p> <p>13 back up a little bit. It was all over the place as</p> <p>14 that negotiation went on. He's arguing that point.</p> <p>15 He said also that respect -- we were comparing apples</p> <p>16 to oranges in that Pioneer's was a consignment order.</p> <p>17 If he reads the -- if he reads what the bid says, so</p> <p>18 was -- so was Hassay Savage's. So he was -- he was</p> <p>19 in error in what he said.</p> <p>20 Q. You said if -- if he had read -- I think</p> <p>21 you said a vin? Is that right? I think I missed a</p> <p>22 word that you said. You said if he had looked at it,</p> <p>23 he would have seen that Hassay Savage was consignment</p> <p>24 also. What was the word that you used?</p> <p>25 A. I don't know. You can ask the reporter to</p>

Baker, Earl Donald - Vol. II

September 25, 2020

11 (Pages 285 to 288)

<p style="text-align: right;">285</p> <p>1 <b>read it back.</b></p> <p>2 THE COURT REPORTER: I missed that word</p> <p>3 too.</p> <p>4 MS. BETRAM: Why don't you read back what</p> <p>5 you heard and we can see if that helps Mr. Baker</p> <p>6 insert the word that we couldn't hear.</p> <p>7 (Whereupon, the answer was read back by the</p> <p>8 reporter.)</p> <p>9 BY MS. BETRAM:</p> <p>10 Q. If he read what the something said. Was</p> <p>11 there another document that Mr. Cicero should have</p> <p>12 reviewed in comparing the prices of the two vendors?</p> <p>13 MR. LEE: I -- well, first of all,</p> <p>14 objection to the form of the question. But,</p> <p>15 Eileen, can you finish reading whatever it is</p> <p>16 that Earl said the last time and then we can go</p> <p>17 to Connie's question because I didn't --</p> <p>18 MS. BETRAM: Oh, I -- I thought she was</p> <p>19 done.</p> <p>20 MR. LEE: Oh.</p> <p>21 (Whereupon, the answer was read back by the</p> <p>22 reporter.)</p> <p>23 THE DEPONENT: That word is "bid."</p> <p>24 THE COURT REPORTER: Bin, b-i-n?</p> <p>25 THE DEPONENT: B-i-d.</p>	<p style="text-align: right;">287</p> <p>1 MR. LEE: Okay. Earl --</p> <p>2 THE VIDEOGRAPHER: Stand by.</p> <p>3 MR. LEE: -- when you leave -- when you</p> <p>4 leave to --</p> <p>5 THE VIDEOGRAPHER: Sorry. I'm going to</p> <p>6 read us off the record.</p> <p>7 MR. LEE: Oh, sorry. Go ahead. When you</p> <p>8 leave --</p> <p>9 THE VIDEOGRAPHER: Going off the record at</p> <p>10 10:39 A.M.</p> <p>11 MR. LEE: You should mute it and then</p> <p>12 unmute it when you come back. That's all.</p> <p>13 (A break was had.)</p> <p>14 THE VIDEOGRAPHER: Back on the record at</p> <p>15 10:48 A.M.</p> <p>16 BY MS. BERTRAM:</p> <p>17 Q. Mr. Baker, we were talking about Hassay</p> <p>18 Savage, and you indicated that you had received an</p> <p>19 investigation report from Mr. Cicero. Other than</p> <p>20 invest -- that investigation report, do you know --</p> <p>21 do you have knowledge of what Mr. Cicero did to</p> <p>22 investigate your concerns about Hassay Savage?</p> <p>23 <b>A. No.</b></p> <p>24 Q. And let's look at the next paragraph in</p> <p>25 Exhibit 29. And it addresses fixing tools in the --</p>
<p style="text-align: right;">286</p> <p>1 THE COURT REPORTER: Oh, bid.</p> <p>2 THE DEPONENT: That Hassay Savage gave us a</p> <p>3 bid or a quote to do those parts at a certain</p> <p>4 amount. If he had read that bid correctly and/or</p> <p>5 the negotiations that Mr. Flatley and Mr. Dziobek</p> <p>6 did over the issue, he would have found that</p> <p>7 Hassay Savage was a consignment bid just as</p> <p>8 Pioneer's was.</p> <p>9 He would have also found that it's nonsense</p> <p>10 to say that we're going to give half of the order</p> <p>11 to Pioneer because we aren't sure whether Hassay</p> <p>12 Savage can supply these. And because it's a</p> <p>13 critical thing, we want to make sure, so we're</p> <p>14 going to give -- we're going to pay for half of</p> <p>15 the order at a higher price.</p> <p>16 That's nonsense considering that that</p> <p>17 design was a Hassay Savage design and they made</p> <p>18 that part for years. That is a -- a</p> <p>19 justification for -- that covers up a purchase</p> <p>20 that is contrary to Smith &amp; Wesson's interests.</p> <p>21 MR. LEE: Whenever it's good for you --</p> <p>22 sorry, Connie. Whenever it's good for you, I,</p> <p>23 personally, would like a five-minute break but</p> <p>24 whenever it's good for you.</p> <p>25 MS. BERTRAM: That's fine for me.</p>	<p style="text-align: right;">288</p> <p>1 in the crib. And you talk about repairing and</p> <p>2 restocking tools. And I'll give you a chance to look</p> <p>3 through that if you need to.</p> <p>4 <b>A. Yeah, I'm familiar with the situation.</b></p> <p>5 Q. Okay. Is this a -- a complete summary as</p> <p>6 of March 12th of your concerns about restocking of</p> <p>7 the Pioneer tools in the crib?</p> <p>8 <b>A. No, that is not complete at all. But it's</b></p> <p>9 <b>representative of what I -- of some of the problems.</b></p> <p>10 Q. And what -- what were your problems with</p> <p>11 the restocking issue -- fixing -- repairing and</p> <p>12 restocking I guess we should say.</p> <p>13 <b>A. Relative to this tool that was mentioned</b></p> <p>14 <b>here and in Cicero's -- Mr. Cicero's report?</b></p> <p>15 Q. What do you mean by that?</p> <p>16 <b>A. I just mean is your question talking in</b></p> <p>17 <b>generalities or this specific thing mentioned?</b></p> <p>18 Q. Well, let's focus on what you raised with</p> <p>19 Mr. Cicero with respect to the repair -- the</p> <p>20 inspection and repair of tools in the RoboCrib. What</p> <p>21 concerns did you raise with him about that?</p> <p>22 <b>A. Well, in this case, we found a problem with</b></p> <p>23 <b>the tool. It was with all of the tools. And we sent</b></p> <p>24 <b>them back at one point to Pioneer on one case, and</b></p> <p>25 <b>they repaired them, but just gave them back repaired,</b></p>



<p style="text-align: right;">289</p> <p>1 but they didn't refund any of the money that we had  2 spent to vend out all of these cutters. So the price  3 that they got for -- for making the tools, we -- we  4 paid them twice. And I was told it wasn't my concern  5 by Mr. Flatley. That wasn't being done for other  6 vendors and it should not be a standard business  7 practice.</p> <p>8 So in respect to Mr. Cicero, I don't know  9 what he did to investigate. All I can tell you is  10 his conclusion was misinformed. He said I should not  11 have fixed them, but I should have given them back to  12 the vendor. When every tool that we have is bad,  13 they have to have -- it would take days or even weeks  14 to send it back to a vendor and have them repair the  15 tools. We couldn't go without tools for weeks. So I  16 have to -- and there are documents that enforce -- or  17 reinforce what I'm saying -- by Mr. Fontaine that  18 said no action is taken -- or should be taken that  19 puts production in jeopardy.</p> <p>20 So I was required by my job to repair some  21 of these tools where we accepted the cost and send  22 the balance of the tools back to Pioneer for repair.  23 They should have been returned at no charge to us  24 because we had -- we had sent them tools that they  25 sent us incorrectly. They re -- should repair them</p>	<p style="text-align: right;">291</p> <p>1 a charge. So we vended them all out and when we  2 return them to the vendor and they just restock  3 the vending machine, then now they're ready to  4 vend again a second time and there's going to be  5 a second charge for each of those tools.</p> <p>6 We need to receive a credit memo from  7 Pioneer stating that you were not charged for  8 those tools that you initially vended that were  9 incorrect. We received no such credit memo, and  10 when I brought it to Mr. Flatly's attention, he  11 said not to be concerned with it.</p> <p>12 BY MS. BETRAM:  13 Q. And do you have any documents that support  14 your belief that Smith &amp; Wesson was charged twice for  15 these defective tools?</p> <p>16 A. Yeah. I just explained the function of how  17 that -- that machine works.</p> <p>18 Q. Right.</p> <p>19 A. There was no way around it.</p> <p>20 Q. Right, but you don't know whether any  21 adjustments were made; is that right?</p> <p>22 A. I was told there was no credit issued for  23 those tools. And when I brought it to my -- the  24 attention of my boss, he said none was issued, but I  25 wasn't to concern myself with it. And that is a</p>
<p style="text-align: right;">290</p> <p>1 and give them back to us at no charge.</p> <p>2 They should also refund all of the vends  3 for cutters that were made incorrectly. That --  4 that's business. You provided an inferior product  5 that did not work. It's your job to refund the  6 money.</p> <p>7 Q. Are you done with your response?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And how do you know that Smith &amp;  10 Wesson was charged twice for -- for the defective  11 tools?</p> <p>12 MR. LEE: Objection --</p> <p>13 A. That's not --</p> <p>14 MR. LEE: Objection to the form of the  15 question, but you may answer.</p> <p>16 A. I don't --</p> <p>17 MR. LEE: Okay.</p> <p>18 THE DEPONENT: Go ahead.</p> <p>19 MR. LEE: You could answer if you --  20 objection to the form of the question. You may  21 answer if you can.</p> <p>22 THE DEPONENT: In knowing how the system  23 works, anything that comes out of the vending  24 machine is -- as soon as it's vended, we purchase  25 it. So any outgoing from the vending machine is</p>	<p style="text-align: right;">292</p> <p>1 concern of my job description.</p> <p>2 Q. And did -- who told you that -- that Smith  3 &amp; Wesson had not been given a credit?</p> <p>4 A. Andrew Dziobek.</p> <p>5 Q. And when did he tell you that?</p> <p>6 A. At the time that those tools came back in.  7 I checked to see if we were issued a credit. He said  8 we had not. I told Mr. Flatley, and Mr. Flatley said  9 not to be concerned with it.</p> <p>10 Q. And -- and I'll -- I'll ask the question  11 again. Did you ever see any documents that showed  12 that Smith &amp; Wesson was charged twice for those  13 tools?</p> <p>14 MR. LEE: Objection to the form of the  15 question. Asked and answered. But you can  16 answer it again if you want to.</p> <p>17 A. In a general sense, yes. We're -- we're  18 issued by budgetary measures what is vended out and  19 charged to our departments accordingly. And that  20 goes on the pitch board.</p> <p>21 So, yes, there were documents that would  22 indicate that we were charged for them just as the  23 program works that every time something is vended  24 out, you get charged for it.</p> <p>25 Now, the way the system works is did we</p>



Baker, Earl Donald - Vol. II

September 25, 2020

13 (Pages 293 to 296)

<p style="text-align: right;">293</p> <p>1 receive a credit for the tools that were mis-vended</p> <p>2 because they were defective. And that source would</p> <p>3 be with Andrew Dziobek. So just as I said on the</p> <p>4 pitch boards, every vend would be summarized on the</p> <p>5 monthly budget.</p> <p>6 Also, any credits would be summarized on</p> <p>7 the monthly budget. So not only did Andrew Dziobek</p> <p>8 tell me that information was on the pitch board, it</p> <p>9 would be public consumption. So did I have</p> <p>10 documents, documentation, that no -- nothing had</p> <p>11 transpired? Everyone in that plant could see</p> <p>12 documentation that no credit was given if they so</p> <p>13 desired.</p> <p>14 Q. And did you ever look just to confirm that</p> <p>15 no credit was given?</p> <p>16 A. I had no reason to believe that Mr. Dziobek</p> <p>17 would not have told me the truth.</p> <p>18 Q. When did you remove the tools from the</p> <p>19 RoboCrib to fix them?</p> <p>20 MR. LEE: May I have that -- that was -- I</p> <p>21 -- I didn't hear that. What -- I didn't hear the</p> <p>22 -- Eileen, can you read the question back to me</p> <p>23 if you heard it?</p> <p>24 (Whereupon, the question was read back by</p> <p>25 the reporter.)</p>	<p style="text-align: right;">295</p> <p>1 vended a huge number of tools so that it looked</p> <p>2 disproportionate to the -- what his usage should be</p> <p>3 so that we could then speak with the cell coordinator</p> <p>4 of that department and let him know that this</p> <p>5 transpired and that -- for him to investigate.</p> <p>6 So I never really dealt with the</p> <p>7 individuals within another department other than my</p> <p>8 own.</p> <p>9 Q. Over what period were they vended out by</p> <p>10 the --</p> <p>11 A. You'd --</p> <p>12 Q. -- slide team?</p> <p>13 A. You would have to refer to that -- that</p> <p>14 document.</p> <p>15 Q. What month was it?</p> <p>16 A. I -- I -- I can't tell you for sure what</p> <p>17 month. I know it would have been fairly early on.</p> <p>18 It would have been someplace around the spring or</p> <p>19 summer of 2013. But I'm unsure. I would refer you</p> <p>20 to the document. I'm sure it would have a date.</p> <p>21 Q. And how did it come about that you,</p> <p>22 yourself, were fixing the tools?</p> <p>23 A. Like I said, we -- they vended them out and</p> <p>24 then we collect -- my department collects those tools</p> <p>25 to -- and when it was determined that the tools were</p>
<p style="text-align: right;">294</p> <p>1 MR. LEE: Okay.</p> <p>2 A. I did not remove the tools from the</p> <p>3 RoboCrib. The department themselves vended all of</p> <p>4 the tools out trying to find a good one. So I didn't</p> <p>5 vend them out. The department that was using them</p> <p>6 vended them out.</p> <p>7 They then are the property of Smith &amp;</p> <p>8 Wesson. So I repaired them so that they had tools to</p> <p>9 do and sent the balance back to Pioneer. Those are</p> <p>10 now Smith &amp; Wesson tools. Those should not be placed</p> <p>11 back in the vending machine because that would</p> <p>12 indicate that they were the property of Pioneer. And</p> <p>13 each time they were vended then, there would be a</p> <p>14 charge, us buying it a second time.</p> <p>15 Q. Which department vended out the defective</p> <p>16 tools?</p> <p>17 A. I believe that was slide department, but</p> <p>18 six years removed, I -- I'm not 100 percent certain.</p> <p>19 Q. Which employee vended them out?</p> <p>20 A. That wouldn't have been of my -- that would</p> <p>21 not be something I knew or would know. They were</p> <p>22 vended out over many shifts or it could have been</p> <p>23 multiple shifts. That isn't something I would ever</p> <p>24 be made aware of. Mr. Dziobek had that information,</p> <p>25 and he would notify me when one specific individual</p>	<p style="text-align: right;">296</p> <p>1 defective and that none of them worked, we -- we sent</p> <p>2 those back to Pioneer. And that -- that was part of</p> <p>3 my job -- job function.</p> <p>4 But they need some tools to continue pro --</p> <p>5 production while those tools are being sent back to</p> <p>6 Pioneer and being repaired by Pioneer. So I fixed in</p> <p>7 my department a number of tools so production could</p> <p>8 continue while he sent the rest back.</p> <p>9 Does that answer -- I'm not a hundred</p> <p>10 percent sure what your question was.</p> <p>11 Q. And you said that --</p> <p>12 MR. LEE: Oh -- sorry, Connie. Earl, if</p> <p>13 you're not sure what the question was, you should</p> <p>14 maybe ask Connie or something but you know -- in</p> <p>15 other words -- I mean, the record is going to be</p> <p>16 messy. So go -- if you understand the question,</p> <p>17 just please go ahead and answer. If you don't</p> <p>18 know the question or you're not certain of it,</p> <p>19 ask for clarification or whatever. Okay?</p> <p>20 THE DEPONENT: Thank you.</p> <p>21 MR. LEE: Yeah.</p> <p>22 BY MS. BETRAM:</p> <p>23 Q. You said that defective tools were vended</p> <p>24 over multiple shifts. For how many days or weeks or</p> <p>25 months were defective tools being vended out?</p>

Baker, Earl Donald - Vol. II

September 25, 2020

14 (Pages 297 to 300)

<p style="text-align: right;">297</p> <p>1 <b>A. I have no idea.</b></p> <p>2 Q. How often is there a Pioneer Tool -- or how</p> <p>3 often was there a Pioneer Tool representative there</p> <p>4 to stock while you worked for the company?</p> <p>5 <b>A. They would stock tools daily, but I</b></p> <p>6 <b>wouldn't necessarily see them.</b></p> <p>7 Q. You talked about Mr. Cicero. Other than</p> <p>8 Mr. Cicero, did you raise concerns about the</p> <p>9 defective tools with anyone else?</p> <p>10 <b>A. Members of my team, I'm sure, and</b></p> <p>11 <b>Mr. Flatley and Mr. Dziobek.</b></p> <p>12 Q. And when did you raise concerns with</p> <p>13 Mr. Dziobek?</p> <p>14 <b>A. I -- I would refer again to the email</b></p> <p>15 <b>record. It would have been at the time that we</b></p> <p>16 <b>returned those tools and I inquired about whether a</b></p> <p>17 <b>credit memo had been issued.</b></p> <p>18 Q. And you said that he indicated it had not.</p> <p>19 Do you recall any information -- other information</p> <p>20 that Mr. Dziobek provided to you about the faulty</p> <p>21 tools?</p> <p>22 MR. LEE: Objection to the form of the</p> <p>23 question, but you -- you may answer.</p> <p>24 <b>A. He wouldn't have information relative to</b></p> <p>25 <b>the -- to tools being defective. He would only have</b></p>	<p style="text-align: right;">299</p> <p>1 discussed it and then they asked me to forward to</p> <p>2 them any documents that I had that spoke on the</p> <p>3 issues. So I believe the email records that I</p> <p>4 forwarded to him, I forwarded emails that described</p> <p>5 it. So that would be in our -- our production record</p> <p>6 and Mr. Cicero's incoming emails.</p> <p>7 Q. And did you meet and talk with Mr. Cicero</p> <p>8 in person regarding the defective -- defective tools?</p> <p>9 <b>A. We met in regard to the general overall</b></p> <p>10 <b>issue of vendors being -- vendor purchases being</b></p> <p>11 <b>possibly influenced by gifts and so forth. And we</b></p> <p>12 <b>met a number of times, some with Mr. Suraci present</b></p> <p>13 <b>and a few without Mr. Suraci. And then we had some</b></p> <p>14 <b>interaction through email. So we didn't meet</b></p> <p>15 <b>specific to the one issue, but in the general</b></p> <p>16 <b>meeting, this was mentioned.</b></p> <p>17 Q. And what information did you provide to</p> <p>18 Mr. Cicero about the -- the defective tool issue?</p> <p>19 <b>A. Again, like I said, we -- in that meeting,</b></p> <p>20 <b>I did not take documents with me. He requested a</b></p> <p>21 <b>meeting. Said to come to him after hours so as no</b></p> <p>22 <b>one would see it. We met. And then he asked me to</b></p> <p>23 <b>forward things afterwards to him to document what I</b></p> <p>24 <b>had on those issues.</b></p> <p>25 <b>I then forwarded documents, which you have</b></p>
<p style="text-align: right;">298</p> <p>1 information relative to procurement and subsequent</p> <p>2 payment for tools. So it would be that area that I</p> <p>3 -- I had talked to him.</p> <p>4 Q. Let me just be more clear. What else did</p> <p>5 Mr. Dziobek say to you about the tools in question?</p> <p>6 MR. LEE: Objection to the form of the</p> <p>7 question, but you may answer if you can.</p> <p>8 <b>A. He -- he said nothing about the tools.</b></p> <p>9 <b>Again, his area only affects the dollars and cents of</b></p> <p>10 <b>purchasing.</b></p> <p>11 Q. What did he tell you about the purchasing</p> <p>12 of the tools?</p> <p>13 <b>A. That no credit memo had been issued.</b></p> <p>14 Q. What else did he tell you?</p> <p>15 <b>A. Nothing.</b></p> <p>16 Q. And other than what you've already</p> <p>17 described in your testimony, what did Mr. Flatley say</p> <p>18 to you about the defective tools?</p> <p>19 <b>A. I think I've already stated it.</b></p> <p>20 Q. And what information did you provide to Rob</p> <p>21 Cicero about the defective tools?</p> <p>22 <b>A. Everything I told you just now.</b></p> <p>23 Q. And do you recall any of the documents that</p> <p>24 you provided to him about this issue?</p> <p>25 <b>A. At the time I spoke with Mr. Cicero, we</b></p>	<p style="text-align: right;">300</p> <p>1 in your record and which Mr. Cicero has in his record</p> <p>2 of what documents I forwarded to him.</p> <p>3 Q. Yeah. Again, just the narrow question:</p> <p>4 What verbally -- do you recall what you said to him</p> <p>5 verbally during those meetings about the defective</p> <p>6 tool issue?</p> <p>7 <b>A. Everything that I just told you. That they</b></p> <p>8 <b>were vended out, they were incorrect, we sent -- we</b></p> <p>9 <b>fixed a number of them so we could continue</b></p> <p>10 <b>production, and that we sent them back to Pioneer to</b></p> <p>11 <b>be repaired.</b></p> <p>12 Pioneer subsequently put them back in the</p> <p>13 vending machine, which would create another charge as</p> <p>14 they were vended. So we were, in fact, vending and</p> <p>15 paying for the same tool twice even though we only</p> <p>16 received a good tool once. And once we purchased it,</p> <p>17 the tool belonged to Smith &amp; Wesson.</p> <p>18 So there were financial and accounting</p> <p>19 improprieties. I brought it to Mr. Flatley. I told</p> <p>20 him that I brought it to Mr. Flatley's attention, and</p> <p>21 I was told to forget about it.</p> <p>22 Q. Did you provide any other information to</p> <p>23 Mr. Cicero in his investigation other than what</p> <p>24 you've already described in your testimony?</p> <p>25 <b>A. About this issue or about any issue?</b></p>

<p style="text-align: right;">301</p> <p>1 Q. About this issue.</p> <p>2 A. No. Just what I've described.</p> <p>3 Q. You indicated that you felt that</p> <p>4 Mr. Cicero's conclusion was misinformed. After you</p> <p>5 received his investigation report, did you provide</p> <p>6 any additional evidence to him or provide any</p> <p>7 additional information to him concerning this issue?</p> <p>8 A. I was provided his document when I was on</p> <p>9 paid leave and I did not have interaction with</p> <p>10 Mr. Cicero after I was placed on paid leave. They</p> <p>11 had shut down my email and my phone, and so I did not</p> <p>12 interact with Mr. Cicero after the fact.</p> <p>13 I know that it was my job to report things</p> <p>14 that I saw that I felt were harming Smith &amp; Wesson.</p> <p>15 I did so, and I don't know what Mr. Cicero did to</p> <p>16 investigate. All I know is his conclusions are in</p> <p>17 contrast to what the facts are. They -- the</p> <p>18 conclusions he makes are incorrect and many of the</p> <p>19 assertions he makes are incorrect.</p> <p>20 So what he did in his investigation to</p> <p>21 arrive at the wrong conclusions, I can't say. All</p> <p>22 I can tell you is that he has errors and false</p> <p>23 statements made in his conclusion that -- it was</p> <p>24 either an error in judgment or an error in how he</p> <p>25 investigated. But he clearly dismisses many of the</p>	<p style="text-align: right;">303</p> <p>1 Pioneer but it was another vendor, I want them to be</p> <p>2 open to that possibility when they do the</p> <p>3 investigation.</p> <p>4 Q. Now, other than what you've just described</p> <p>5 with respect to the TVs and the tickets, what else</p> <p>6 supports your view that Mr. Cicero did not even</p> <p>7 investigate your allegations?</p> <p>8 A. A conversation I had with Mr. Goode where</p> <p>9 he had told me that -- that he had sent a bid to</p> <p>10 Pioneer -- or to Smith &amp; Wesson and charged less than</p> <p>11 his catalog price because the volume -- he was giving</p> <p>12 them a discount because he wanted to increase his</p> <p>13 business. That bid, he says, was provided to</p> <p>14 Mr. Flatley.</p> <p>15 He said that bid was given to Pioneer, and</p> <p>16 Pioneer illegally sent that -- that bid to other MSC</p> <p>17 customers and told them that MSC is giving a smaller</p> <p>18 discount and going under the -- the price to Smith &amp;</p> <p>19 Wesson and they don't do that with you. They did</p> <p>20 that in order to destroy MSC business with their</p> <p>21 other customers.</p> <p>22 Mr. Goode tells me that he was going to sue</p> <p>23 Pioneer and when the lawsuit took place or was -- was</p> <p>24 to take place -- well, basically, he told me that</p> <p>25 much of it. I told that to Mr. Cicero.</p>
<p style="text-align: right;">302</p> <p>1 things I said that he said he found no evidence of.</p> <p>2 I gave him evidence.</p> <p>3 So I would just say that his investigation</p> <p>4 was greatly in error and that I find out, you know,</p> <p>5 through the documents you provided in discovery that</p> <p>6 he didn't even investigate.</p> <p>7 So I think his investigation was a sham,</p> <p>8 but that's after the fact. While I worked at Smith &amp;</p> <p>9 Wesson, I wasn't -- I wasn't privy to what he</p> <p>10 investigated, but I can tell you right now it wasn't</p> <p>11 very much. He -- he was aware of TVs given. He</p> <p>12 didn't investigate. He was aware of baseball tickets</p> <p>13 given. He doesn't seem to care. And instead he</p> <p>14 argued with me and said that I had recanted, which</p> <p>15 was also an -- in error.</p> <p>16 All I told him was that it may not -- there</p> <p>17 could have been another vendor that gave me the</p> <p>18 tickets other than Pioneer. So that is not</p> <p>19 recanting. I still got tickets sent in the mail. It</p> <p>20 just may not have been Pioneer. It was just part of</p> <p>21 the pay to play that went on at Smith &amp; Wesson. And</p> <p>22 instead in the investigation, he -- he puts a false</p> <p>23 claim in there that I recanted that I had been given</p> <p>24 the tickets. It wasn't the fact at all.</p> <p>25 I'm just trying to be fair. If it wasn't</p>	<p style="text-align: right;">304</p> <p>1 After, Mr. Cicero dismissed it as having</p> <p>2 not found any evidence that any vendor was being</p> <p>3 given preferential treatment or that no bids were</p> <p>4 given from one place to another.</p> <p>5 That isn't correct based on what Mr. Hynes</p> <p>6 told me. And in this particular situation, when I</p> <p>7 talked to Mr. Goode by phone, after I received the</p> <p>8 report from Mr. Cicero saying that there -- he found</p> <p>9 no evidence of bids being given to one company or</p> <p>10 another, Mr. Goode then told me that that he</p> <p>11 considered to be a lie because he had asked when</p> <p>12 there was a lawsuit pending.</p> <p>13 Mr. Cicero acted as a mediator between</p> <p>14 Pioneer and MSC to avoid a lawsuit, which would set</p> <p>15 -- which would indicate that Mr. Cicero was deceptive</p> <p>16 in what he said in his investigation report. There</p> <p>17 not only was evidence that bids were taken from MSC</p> <p>18 and given to Pioneer to create a competitive</p> <p>19 imbalance but that Mr. Cicero was aware of it having</p> <p>20 mediated the dispute.</p> <p>21 Q. And when did you speak with Mr. Goode after</p> <p>22 you received the report?</p> <p>23 A. It would have been in the phone dump of my</p> <p>24 phone. I was actually at a tractor supply store and</p> <p>25 I called Mr. Goode by accident. We exchanged a few</p>

<p style="text-align: right;">305</p> <p>1 pleasantries. Asked him how he was doing and his  2 family. And he asked how things were going with  3 Smith &amp; Wesson, and I had told him that Mr. -- I told  4 him of Mr. Cicero's investigation report, and that's  5 when he told me that he believed that to be a lie by  6 Mr. Cicero in that Mr. Cicero had acted as a  7 mediator.</p> <p>8 Q. And do you have personal knowledge of what  9 Mr. Goode said to Mr. Cicero during the course of the  10 investigation of your concerns?</p> <p>11 A. He said he did not talk -- that Mr. Cicero  12 has never talked to him since he started the  13 investigation. He said he was asked nothing.</p> <p>14 Q. Did he tell you that he had not been  15 contacted at all by Mr. Cicero?</p> <p>16 A. That's what he had told me, yes.</p> <p>17 Q. And with respect to the fixing of the --  18 fixing -- you know, fixing the defective tools in the  19 RoboCrib, did you consider that to be a violation of  20 Sarbanes-Oxley?</p> <p>21 MR. LEE: Objection to form of the  22 question, but you may answer if you can.</p> <p>23 A. I -- I believe it -- it constitutes deep  24 fraud in the company or fraud in that we're being  25 charged something that we should not have been. And</p>	<p style="text-align: right;">307</p> <p>1 2014. I -- but I believe Victor Matos had mentioned  2 it somewhat earlier, maybe a couple months earlier,  3 with less specificity than what Mr. Goode gave me.  4 But that would have been summer of 2014.</p> <p>5 Q. Okay. And was it before you went on  6 administrative leave?</p> <p>7 A. Yes. So I -- I did actually, after having  8 spoken with Mr. Goode, had a meeting with Mr. Cicero.  9 So it would have been prior to the last meeting I had  10 with Mr. Cicero.</p> <p>11 Q. So let's look at paragraph 4 of Exhibit 29.  12 That's on the -- the next page.</p> <p>13 MR. LEE: Just to be sure, the next page  14 being?</p> <p>15 MS. BERTRAM: Nine seventy.</p> <p>16 MR. LEE: Okay.</p> <p>17 BY MS. BERTRAM:</p> <p>18 Q. You talk about in this paragraph the fact  19 that you received an email from Pioneer questioning  20 why MSC got more regrinds than Pioneer. And then two  21 days later, you received a review from Larry.</p> <p>22 Do you contend that the email from Pioneer  23 questioning the regrinds is some sort of fraud or any  24 other violation of Sarbanes-Oxley?</p> <p>25 MR. LEE: Objection to the form of the</p>
<p style="text-align: right;">306</p> <p>1 when brought to their attention, if they turn a blind  2 eye to mischarges, the fact that I feel that there  3 were -- it wasn't a onetime thing but it was a  4 systematic approach, and having been aware that there  5 were gifts given and I believe there to be a quid pro  6 quo, yes, I believe that they're part of the SOX  7 claim.</p> <p>8 Q. And let me go back for a minute. You said  9 that Mr. Goode had told you that he (garbled audio)  10 --</p> <p>11 THE COURT REPORTER: I'm sorry.</p> <p>12 Ms. Bertram --</p> <p>13 MR. LEE: Yeah, your -- your -- like your  14 sound is garbled. I -- like you come in and out.</p> <p>15 MS. BETRAM: Okay. Can you hear me now?</p> <p>16 MR. LEE: Now is good. Now is really good.</p> <p>17 BY MS. BETRAM:</p> <p>18 Q. When did Mr. Goode tell you that he had  19 sent a bid to Smith &amp; Wesson and that Smith &amp; Wesson  20 -- I'm sorry -- and that Smith &amp; Wesson had -- let me  21 start over.</p> <p>22 When did Mr. Goode tell you that Smith &amp;  23 Wesson had shared its bid with Pioneer and then  24 Pioneer then shared it with the customers of MSC?</p> <p>25 A. It would have been either June or July of</p>	<p style="text-align: right;">308</p> <p>1 question, but you may answer.</p> <p>2 A. Which document are we looking at?</p> <p>3 Q. Right --</p> <p>4 MR. LEE: Bottom right-hand corner. Bottom  5 right-hand corner, there's a document number --</p> <p>6 THE DEPONENT: Yeah.</p> <p>7 MR. LEE: -- Earl. And she said 970, I  8 think Connie said.</p> <p>9 BY MS. BETRAM:</p> <p>10 Q. That's right. This is the first full  11 paragraph on that page.</p> <p>12 A. Oh, okay. So it's the fourth paragraph of  13 970?</p> <p>14 MR. LEE: No, the first paragraph of 970.</p> <p>15 BY MS. BETRAM:</p> <p>16 Q. The first paragraph.</p> <p>17 A. Okay. The question is?</p> <p>18 Q. Is it your position that Pioneer's email  19 questioning why MSC got more regrinds than it is  20 fraud or some other violation of Sarbanes-Oxley?</p> <p>21 A. No.</p> <p>22 MR. LEE: Objection to --</p> <p>23 THE DEPONENT: I'm sorry.</p> <p>24 MR. LEE: Objection to the form of the  25 question, but you may answer.</p>

<p style="text-align: right;">309</p> <p>1 BY MS. BETRAM:</p> <p>2 Q. And do you have any personal knowledge that</p> <p>3 Pioneer told Larry Flatley about the regrind issue,</p> <p>4 that they had concerns about the regrinds?</p> <p>5 A. I would have to see the email. But I</p> <p>6 did -- I did inform him of the email, so there was</p> <p>7 discussion.</p> <p>8 Q. When did you inform Larry Flatley of the</p> <p>9 email from Pioneer?</p> <p>10 A. I think it would have been that day. I --</p> <p>11 I'm not sure if it was that day or whether this</p> <p>12 transpired at the end of the day and I talked to him</p> <p>13 the next day, but I know that there was conversation</p> <p>14 on it.</p> <p>15 Q. And do you know when Mr. Flatley drafted</p> <p>16 his review?</p> <p>17 A. The first draft?</p> <p>18 MR. LEE: Objection to -- objection to the</p> <p>19 form of the question, calls for speculation, but</p> <p>20 you may answer if you can.</p> <p>21 A. The -- we received a -- a bad review out of</p> <p>22 cycle that had multiple dates. The first one that I</p> <p>23 received was dated the same day as the email even</p> <p>24 though he presented it to me the next day.</p> <p>25 Now, there had been subsequent drafts after</p>	<p style="text-align: right;">311</p> <p>1 may be connected with the other things that I</p> <p>2 reported. Again, it's not my -- my view that it's my</p> <p>3 job to investigate, but it was certainly an oddity</p> <p>4 that I'm doing business with a company and Larry</p> <p>5 questions every time I send an order to Benchmark.</p> <p>6 Then Larry suggests I send something to</p> <p>7 Benchmark, and when I do, it's now being represented</p> <p>8 by Pioneer Tool. I've never in my entire history of</p> <p>9 working, which I currently worked -- had worked</p> <p>10 43 years in a machine shop. I've never seen a vendor</p> <p>11 who was doing business with you then reverts to being</p> <p>12 represented by somebody else and then -- then takes a</p> <p>13 lesser amount from you.</p> <p>14 So it represents an anomaly that may, in</p> <p>15 fact, be connected with some of the influence</p> <p>16 peddling that I believe was going on at Smith &amp;</p> <p>17 Wesson.</p> <p>18 Q. Okay. So let's back up a little bit.</p> <p>19 Benchmark is a manufacturer, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And -- and at some point, were they selling</p> <p>22 tools -- selling their own tools to others as a</p> <p>23 distributor as well?</p> <p>24 A. I -- I don't know what they did to others;</p> <p>25 they didn't tell me that. All I know is they were</p>
<p style="text-align: right;">310</p> <p>1 this where he has either revised it, typed it,</p> <p>2 whatever, but it has later days on it. But the very</p> <p>3 first one that I received had the same date that it</p> <p>4 was drafted, the same date of the email.</p> <p>5 Q. But you don't know when he started drafting</p> <p>6 it, correct?</p> <p>7 A. No.</p> <p>8 Q. And you don't know when he completed it,</p> <p>9 correct?</p> <p>10 A. I -- I know when it was dated.</p> <p>11 Q. Let's look at the next paragraph which</p> <p>12 relates to Benchmark.</p> <p>13 THE COURT REPORTER: Relates to what?</p> <p>14 MS. BETRAM: Relates to Benchmark,</p> <p>15 B-e-n-c-h-m-a-r-k.</p> <p>16 BY MS. BETRAM:</p> <p>17 Q. I'll give you a chance to look over that.</p> <p>18 A. Third paragraph?</p> <p>19 Q. Yes. Right after the one we were just</p> <p>20 talking about.</p> <p>21 A. Okay.</p> <p>22 Q. And do you contend that this paragraph</p> <p>23 relating to Benchmark describes any fraud or</p> <p>24 violation of Sarbanes-Oxley?</p> <p>25 A. I believe that this shows an anomaly that</p>	<p style="text-align: right;">312</p> <p>1 dealing directly with me. They were selling tools</p> <p>2 and grinding tools for us, yes.</p> <p>3 Q. And for how long were they dealing directly</p> <p>4 with you?</p> <p>5 A. I can't say. I'm sure your -- your</p> <p>6 purchasing records would -- would have that</p> <p>7 information.</p> <p>8 Q. Was it a period of months or weeks?</p> <p>9 A. I can't say. We're -- we're talking six</p> <p>10 years ago. All I know is that we had dealt with them</p> <p>11 for a time.</p> <p>12 Q. Um-hmm. Did they have a salesperson that</p> <p>13 came to your facility?</p> <p>14 A. No. They actually invited us to their</p> <p>15 facility where I met them and viewed their facility.</p> <p>16 So Ryan Mooring was the primary contact at Benchmark.</p> <p>17 Q. Okay. And in your description, you say, A</p> <p>18 week later, Turpin Sales visits with Benchmark. Who</p> <p>19 is Turpin Sales?</p> <p>20 A. I have no clue. He's -- he's somebody that</p> <p>21 showed up. Mr. Turpin showed up with Ryan Mooring</p> <p>22 apparently. I wasn't -- I didn't even recall that</p> <p>23 Ryan had visited, but if you say so ...</p> <p>24 Q. And who is Ryan again?</p> <p>25 A. Ryan Mooring is -- was at the time a person</p>



Baker, Earl Donald - Vol. II

September 25, 2020

18 (Pages 313 to 316)

<p style="text-align: right;">313</p> <p>1 that did design work and so forth. He actually  2 designed some of the tools at Benchmark. So I met  3 him when I -- I visited there. If, in fact, he  4 visited us as well, so be it.</p> <p>5 Q. Okay. And when did Turpin Sales visit with  6 Ryan Mooring and inform you that Pioneer was a  7 representative for Benchmark?</p> <p>8 A. He didn't represent that when he visited.  9 We got a -- I got a call from -- from Mr. Dziobek,  10 and subsequently Mr. Mooring saying that now they  11 were represented by Pioneer.</p> <p>12 Q. And when was that?</p> <p>13 A. I don't know. You'd have to -- I'd refer  14 you to the email record. I -- there are emails in  15 the discovery that would nail that date down for you.</p> <p>16 Q. Was it in 2013 or 2014?</p> <p>17 A. To be honest, I -- I really don't even know  18 for sure of the dates.</p> <p>19 Q. Okay. And -- and you -- you find this odd.  20 Did you do anything to investigate what you  21 considered to be an odd situation?</p> <p>22 A. Yes. I -- I -- I called Ryan Mooring, and  23 he indicated that there were some things behind the  24 scenes he couldn't tell me, but, yes, in fact, we  25 were -- he was going to be now under the auspices of</p>	<p style="text-align: right;">315</p> <p>1 to them.</p> <p>2 Q. And you said Jim Valley and Jerry Cherpose,  3 and who was the third person that you identified?</p> <p>4 A. Mike Carrere.</p> <p>5 Q. And did Mr. Valley, Mr. Cherpose or  6 Mr. Carrere provide any information as to why Pioneer  7 Tools was representing Benchmark as of --</p> <p>8 A. They -- they thought it was odd and that  9 they hadn't seen anything like it, but they knew the  10 same as I did but voiced similar concerns for -- they  11 didn't understand the -- the switch over.</p> <p>12 Q. And did you raise concerns about the  13 situation with Benchmark with Mr. Cicero or  14 Mr. Suraci or anyone else at Smith &amp; Wesson?</p> <p>15 A. With both of them, yes.</p> <p>16 Q. And what did you tell them about the  17 situation?</p> <p>18 A. Just what I've told you.</p> <p>19 Q. And did you provide any documentation to  20 them supporting your concerns?</p> <p>21 A. I don't recall whether I forwarded  22 documents but enough just to reinforce the  23 truthfulness of what I just told you, that there was  24 an email record for everything I said. So I might  25 have provided that, but I can't tell you for certain</p>
<p style="text-align: right;">314</p> <p>1 Pioneer and that from that point forward, I would  2 make my requests for Benchmark's services through  3 Pioneer, but that he wasn't at liberty to share  4 everything that was going on. But he just confirmed  5 that, yes, from his standpoint that was factual that  6 I should contact them.</p> <p>7 Q. And did you do anything else to investigate  8 the situation?</p> <p>9 A. I -- I asked around to find out. I think I  10 talked to Jim Valley about it and asked whether or  11 not -- from time to time, engineers would deal  12 directly with their tooling vendors even though it  13 came through the -- the regrinds and so forth would  14 come through the auspices of my department, but many  15 times engineers would speak with the suppliers on  16 their own.</p> <p>17 So Jim Valley was one who was very  18 proactive in his -- his tooling purchases. So I felt  19 that if any engineer would have talked to them, he  20 would have. I think Jeremy Cherpose (phonetic) was  21 another one that had tools coming from Benchmark.  22 And I think Mr. Carrere (phonetic), another engineer,  23 was dealing with -- or Benchmark through their  24 project that was called Cold Turkey. So those  25 engineers would have interaction, and so I did talk</p>	<p style="text-align: right;">316</p> <p>1 I did.</p> <p>2 Q. And -- and do you know what Mr. Cicero or  3 Mr. Suraci did in their investigation of this  4 concern?</p> <p>5 A. As I said many times before, it was not my  6 function or did I view it as my function to know what  7 they were doing in their investigation. They did not  8 share it with me.</p> <p>9 Q. And -- and do you know what information any  10 of the witnesses may have provided to them about this  11 situation -- about this concern, I should say?</p> <p>12 A. I believe I just answered that.</p> <p>13 Q. If you'd look at paragraph 6 -- hold on one  14 second.</p> <p>15 MR. LEE: Are we still on that page 970,  16 Connie?</p> <p>17 MS. BERTRAM: We are.</p> <p>18 BY MS. BETRAM:</p> <p>19 Q. It's the last paragraph. I'll give you a  20 chance to read through that last paragraph that  21 starts, I met with Eric -- Derek Upson.</p> <p>22 A. Yes.</p> <p>23 Q. Now, you end this paragraph saying, That  24 ended the meeting. I have not brought up the subject  25 to Larry since I can't figure out the significance of</p>



Baker, Earl Donald - Vol. II

September 25, 2020

19 (Pages 317 to 320)

<p style="text-align: right;">317</p> <p>1 the outburst.</p> <p>2 And this -- this relates to a \$50,000</p> <p>3 invoice. Did -- did you consider this situation you</p> <p>4 describe in this paragraph to be fraud or some other</p> <p>5 violation of Sarbanes-Oxley?</p> <p>6 <b>A. No. It was a normal function of -- of how</b></p> <p>7 <b>they worked, how the company worked.</b></p> <p>8 Q. And did you say no? I'm sorry. I just</p> <p>9 didn't hear the first word.</p> <p>10 <b>A. No, it was not unusual or anything</b></p> <p>11 <b>fraudulent in what was described in that dead and</b></p> <p>12 <b>dying tool issue.</b></p> <p>13 Q. And let's go to the next page, which has</p> <p>14 the last -- last paragraph. And this relates to</p> <p>15 EASTEC. And I'll give you a chance to read through</p> <p>16 that. Let me know when you're done.</p> <p>17 <b>A. Okay.</b></p> <p>18 Q. Do you consider the concern described in</p> <p>19 this paragraph on page 0971 to be fraud or any</p> <p>20 violation of Sarbanes-Oxley?</p> <p>21 MR. LEE: Objection to the --</p> <p>22 <b>A. Yes.</b></p> <p>23 MR. LEE: -- form of the -- objection.</p> <p>24 Objection to the form of the question, but you</p> <p>25 may answer.</p>	<p style="text-align: right;">319</p> <p>1 MR. LEE: Objection to the form.</p> <p>2 BY MS. BERTRAM:</p> <p>3 Q. What was your response? I'm sorry.</p> <p>4 <b>A. No.</b></p> <p>5 Q. Did they tell you that they -- let's just</p> <p>6 back up a little bit. What did you tell them -- tell</p> <p>7 them about the incident?</p> <p>8 <b>A. What is listed there is pretty much a</b></p> <p>9 <b>summary of what I had mentioned. Those are the facts</b></p> <p>10 <b>as they -- as they occurred. The only thing I would</b></p> <p>11 <b>add to it was that I told them that in and of itself</b></p> <p>12 <b>none of that is a violation from the standpoint that</b></p> <p>13 <b>-- a vendor is allowed to offer gifts. And I didn't</b></p> <p>14 <b>actually witness anyone receive gifts.</b></p> <p>15 What -- the reason I was bringing that to</p> <p>16 their attention was Mr. Flatley's comment that if I</p> <p>17 attended and was the highest ranking Smith &amp; Wesson</p> <p>18 employee there, I would win something. And when -- I</p> <p>19 found it odd that Mr. -- or the representative for</p> <p>20 Pioneer had gone through and noticed that my name</p> <p>21 wasn't even entered. I wasn't allowed to receive</p> <p>22 anything, so I didn't enter. He would not have known</p> <p>23 that unless he was looking through the box in order</p> <p>24 to find my name.</p> <p>25 So it was odd that he knew the next day I</p>
<p style="text-align: right;">318</p> <p>1 THE DEPONENT: Sorry.</p> <p>2 MR. LEE: Okay.</p> <p>3 THE DEPONENT: Yes.</p> <p>4 BY MS. BETRAM:</p> <p>5 Q. I've seen various summaries of this</p> <p>6 document. But are -- are you aware of any other</p> <p>7 documents that support your concern about the EASTEC</p> <p>8 barbecue and raffle?</p> <p>9 MR. LEE: Objection to the form of the</p> <p>10 question, but you may answer.</p> <p>11 <b>A. Can you please restate the question?</b></p> <p>12 Q. Let me just ask a better question.</p> <p>13 Did you do anything to investigate your</p> <p>14 concerns about the EASTEC raffle?</p> <p>15 <b>A. I don't believe my function was to</b></p> <p>16 <b>investigate. My -- my function was to report things</b></p> <p>17 <b>that I felt were improper. I did report this and --</b></p> <p>18 <b>to multiple people starting right after it occurred.</b></p> <p>19 <b>And so I -- I did no more investigation.</b></p> <p>20 Q. And you initially raised concerns with</p> <p>21 Ms. Glica and Ms. Salvador; is that right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And did they subsequently tell you that</p> <p>24 they thought that you were just, quote, venting?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">320</p> <p>1 hadn't entered and he entered for me. I felt to</p> <p>2 facilitate exactly what Mr. -- Mr. Flatley said. And</p> <p>3 the fact the next day -- or, you know, I don't know</p> <p>4 if it was the next day -- the subsequent working day,</p> <p>5 the person came to deliver a gift to Mr. Flatley.</p> <p>6 Knowing the prior, the action during, and what was</p> <p>7 said to me prior by Mr. Flatley, the actions of</p> <p>8 Pioneer throughout the next day of putting my name in</p> <p>9 and the subsequent delivery of a gift to Mr. Flatley,</p> <p>10 to me, indicated a quid pro quo that I felt that it</p> <p>11 gave more credence to Mr. Flatley's assertion that I</p> <p>12 would win something. It showed that there was</p> <p>13 something underhanded going on there that was below</p> <p>14 the scenes. And -- and I thought they should be</p> <p>15 aware of it.</p> <p>16 They then didn't tell me they thought I was</p> <p>17 venting. They told me they thought it was serious</p> <p>18 and that she said that she wasn't surprised --</p> <p>19 knowing -- having known Mr. Flatley for a while, she</p> <p>20 wasn't surprised. I don't know the context of that</p> <p>21 -- that comment, but that's what she said. And she</p> <p>22 asked me to not share the Pioneer issue with anyone</p> <p>23 else because we don't know who might be involved and</p> <p>24 that she was going to look into it. And that -- that</p> <p>25 was what she said at the end.</p>

Baker, Earl Donald - Vol. II

September 25, 2020

20 (Pages 321 to 324)

<p style="text-align: right;">321</p> <p>1 Q. And who said, Don't share this because we 2 don't know who might be involved?</p> <p>3 A. Ms. Salvador.</p> <p>4 Q. And do you know what she or Ms. Glica did 5 to look into the situation at that point?</p> <p>6 A. As -- as I've stated before, I -- I -- I 7 did not concern myself with what they were doing on 8 their end to do their job. I did my job by reporting 9 it. What they did, I didn't look at.</p> <p>10 And I -- you must understand that I -- I'm 11 not trying to be a pain when I keep saying this. It 12 was the overall view of interactions between them 13 that they didn't even imply that there was any 14 obligation on their behalf to report their 15 conclusions or anything back to me. They just felt 16 like they were going to investigate.</p> <p>17 Because I think we had an overall view that 18 the party being harmed was Smith &amp; Wesson, not 19 necessarily me. So their responsibility was to do 20 the right thing for Smith &amp; Wesson based on the 21 information I provided. So that was the object of 22 everyone's concern was Smith &amp; Wesson, not me.</p> <p>23 Q. And do you know what Kathy Salvador said to 24 Mr. Cicero, Mr. Suraci, or any -- anyone else 25 involved with the investigation about what you told</p>	<p style="text-align: right;">323</p> <p>1 with Mr. Suraci?</p> <p>2 A. He was brought on shortly after the 3 February out-of-cycle review. Initially, 4 Ms. Salvador was to attend the meeting with 5 Mr. Fontaine, and she called and told me by phone 6 that she was asked not to attend and that someone 7 else would be there. She did say she was surprised 8 by it, and I -- I may have told her at that time that 9 I had some concerns that I was going to be there 10 without HR representation in an issue where I felt 11 like I was being lied about and which was an HR 12 concern.</p> <p>13 MS. BETRAM: I'll move to strike as 14 nonresponsive.</p> <p>15 Eileen, could you read the question that I 16 asked Mr. Baker?</p> <p>17 (Whereupon, the question was read back by 18 the reporter.)</p> <p>19 MS. BETRAM: I'll move to strike as 20 nonresponsive.</p> <p>21 BY MS. BETRAM:</p> <p>22 Q. And, Mr. Baker, we went through your 23 communications with Ms. Salvador and Ms. Glica during 24 the first day of your deposition. I'm asking you 25 when, a date or a date range, you first raised this</p>
<p style="text-align: right;">322</p> <p>1 them at the time about the raffle?</p> <p>2 A. I do not know what she did say. I do know 3 of admissions that some of the things Mr. Suraci 4 indicated he heard from me for the first time, so he 5 said he would double back and find out why Kathy had 6 not mentioned a certain portion to him and see if she 7 had documented it.</p> <p>8 Q. And you don't know what Mr. Glica, if 9 anything, said to Mr. Suraci or others doing the 10 subsequent investigation?</p> <p>11 A. You mean Ms. Glica?</p> <p>12 Q. Yes.</p> <p>13 A. No, I had no -- like I said, they didn't 14 report what they did investigation -- they -- 15 investigation-wise. But I wasn't aware of any -- 16 when I recounted to Mr. Suraci the things I told 17 Ms. Glica, he made no indication that anything had 18 been omitted with that interaction, however, he did 19 with Ms. Salvador.</p> <p>20 Q. And do you know what Ms. Salvador said to 21 Mr. Suraci after he circled back to her to ask for 22 clarification?</p> <p>23 A. No. He -- Mr. Suraci did not report to me 24 what he was finding out.</p> <p>25 Q. And when did you first raise this concern</p>	<p style="text-align: right;">324</p> <p>1 issue with Mr. Suraci.</p> <p>2 We are -- this deposition is going to go on 3 forever if we don't start listening to the questions 4 and confining our responses to the question that's 5 been asked.</p> <p>6 MR. LEE: Objection to the form --</p> <p>7 A. I --</p> <p>8 MR. LEE: Objection to the form of the 9 question, but you may answer.</p> <p>10 A. I mentioned the scenario about Mr. Suraci 11 in order to say Mr. Suraci's involvement started with 12 that meeting with Mr. Fontaine. In some time 13 subsequent to that, I told him. I cannot tell you 14 the first time I mentioned it because my interactions 15 with Mr. Suraci happened on a daily basis after that 16 meeting. So it would be sometime after the meeting 17 with Mr. Fontaine.</p> <p>18 Q. And did you also raise this concern with 19 Mr. Cicero when you spoke with him?</p> <p>20 A. Which concern?</p> <p>21 Q. The concern about the raffle?</p> <p>22 A. Yes.</p> <p>23 Q. And when did you first raise that concern 24 with him?</p> <p>25 A. The first -- the first time I met him.</p>

Baker, Earl Donald - Vol. II

September 25, 2020

21 (Pages 325 to 328)

<p style="text-align: right;">325</p> <p>1 Q. Okay. We talked about that.</p> <p>2 Did you provide any documents to Mr. Cicero</p> <p>3 or Mr. Suraci that supported your concerns about the</p> <p>4 raffle?</p> <p>5 <b>A. I gave them what documents I had, but that</b></p> <p>6 <b>was more a personal interaction. I don't know that</b></p> <p>7 <b>there were documents.</b></p> <p>8 Q. Do you recall any of the documents that you</p> <p>9 provided to them on the raffle issue?</p> <p>10 <b>A. No, but they would be in the record,</b></p> <p>11 <b>whatever I did provide.</b></p> <p>12 Q. And did you identify Buddy Upson when you</p> <p>13 spoke with Mr. Suraci and Mr. Cicero about the raffle</p> <p>14 situation?</p> <p>15 <b>A. You have mixed two names together. I don't</b></p> <p>16 <b>know a Buddy Upson.</b></p> <p>17 Q. You said in your -- in the paragraph, you</p> <p>18 said that someone named Buddy spoke with you. What</p> <p>19 -- what's Buddy's last name?</p> <p>20 <b>A. I don't know. He's the shop manager, but</b></p> <p>21 <b>his last name is not Upson.</b></p> <p>22 Q. Okay. And -- and did you identify Buddy</p> <p>23 when you spoke with Mr. Cicero or Mr. Suraci?</p> <p>24 <b>A. I -- I cannot recall whether I mentioned</b></p> <p>25 <b>his name.</b></p>	<p style="text-align: right;">327</p> <p>1 investigate your concerns about the raffle, correct?</p> <p>2 <b>A. I've answered it numerous times that they</b></p> <p>3 <b>did not share who they investigated or what -- who</b></p> <p>4 <b>they talked to to me.</b></p> <p>5 Q. So Mr. Cicero reported to you that</p> <p>6 Mr. Flatley did not receive the iPad that you had</p> <p>7 seen in the hands of the Pioneer Tool employee,</p> <p>8 right?</p> <p>9 <b>A. He mentions that in the report.</b></p> <p>10 Q. Right. And your basis for believing that</p> <p>11 the iPad was for Mr. Flatley was based on the fact</p> <p>12 that you saw the salesperson holding an iPad in his</p> <p>13 hand?</p> <p>14 <b>A. He held it out as if he were giving it to</b></p> <p>15 <b>me and expecting me to give it to Mr. Flatley. And</b></p> <p>16 <b>he did not mention that Mr. Flatley had won an iPad.</b></p> <p>17 <b>He is holding out an iPad and said, Mr. Flatley has</b></p> <p>18 <b>won something, and -- and tried to hand it to me. I</b></p> <p>19 <b>did not take it. It's not my job to go deliver it.</b></p> <p>20 But, as I told Mr. Cicero, I have no</p> <p>21 knowledge that Larry didn't do the right thing and</p> <p>22 accept it. I said I have no -- no vision of what</p> <p>23 happened after he left my office. Mr. Flatley may</p> <p>24 have done the right thing. All I'm saying is that</p> <p>25 his comment prior to the raffle that if you were the</p>
<p style="text-align: right;">326</p> <p>1 Q. And Stanley Wnuk was also present when you</p> <p>2 had this conversation with Mr. Fontaine about the</p> <p>3 raffle, right?</p> <p>4 MR. LEE: Object to the form of the</p> <p>5 question. Misstates the witness's prior</p> <p>6 testimony, but you may answer.</p> <p>7 <b>A. You -- you have mixed up the names. The --</b></p> <p>8 <b>they -- there was never a meeting with Mr. Wnuk and</b></p> <p>9 <b>Mr. Fontaine and I.</b></p> <p>10 Q. I probably just misstated Mr. Flatley's</p> <p>11 name. When you were at the event the first night and</p> <p>12 Larry allegedly made these statements to you about</p> <p>13 the raffle, was Stanley Wnuk there?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. And did you identify his name as a</p> <p>16 potential witness to Mr. Suraci or Mr. Cicero?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And do you know whether they spoke with</p> <p>19 him?</p> <p>20 <b>A. I -- I do not know what -- whether they --</b></p> <p>21 <b>who they investigated.</b></p> <p>22 Q. Okay. So you don't know if they spoke with</p> <p>23 Buddy or Mr. Flatley about this either, right?</p> <p>24 <b>A. I do not.</b></p> <p>25 Q. And you don't know what they did to</p>	<p style="text-align: right;">328</p> <p>1 highest ranking, you would win, and Mr. -- and</p> <p>2 Buddy's entering -- finding -- going through and</p> <p>3 trying to look for my name and didn't find it and</p> <p>4 adding my name and this subsequent delivery of an</p> <p>5 iPad showed quid pro quo.</p> <p>6 I didn't see anything improper in the</p> <p>7 actual raffle. They're allowed to give away prizes.</p> <p>8 We're not allowed to receive them. And I -- I</p> <p>9 witnessed no one receiving a prize. Why I mentioned</p> <p>10 it to them and why it's important, it demonstrates</p> <p>11 quid pro quo in my mind.</p> <p>12 Q. The -- the -- the iPad that the sales</p> <p>13 representative was holding out that you observed, was</p> <p>14 it in a box or was it just the iPad itself?</p> <p>15 <b>A. No, it was in a box. In my recollection, I</b></p> <p>16 <b>believe it was in a box.</b></p> <p>17 Q. And if the sales representative represented</p> <p>18 to Rob Cicero or Ed Suraci that the iPad was his own,</p> <p>19 do you have any -- any reason to dispute that?</p> <p>20 MR. LEE: Objection to the form of the</p> <p>21 question, calls for speculation, but if you can</p> <p>22 answer, you can answer.</p> <p>23 <b>A. I -- I can't even speculate. I -- I don't</b></p> <p>24 <b>know if such conversation even -- even took place and</b></p> <p>25 <b>what was represented. So it's a hypothetical that I</b></p>

<p style="text-align: right;">329</p> <p>1 -- I have no clue what someone may or may not have 2 represented or whether it may or may not have been 3 correct. Again, I wasn't -- 4 Q. You don't know -- 5 A. -- brought into their -- I wasn't brought 6 into their investigation. I just saw the result of 7 their investigation, which I felt to be highly 8 flawed. 9 Q. And you don't know what the sales 10 representative said to Mr. Cicero or Mr. Suraci about 11 the iPad, right? 12 A. I -- I just stated as such. I just 13 answered that. 14 Q. And you don't know what Mr. Flatley said to 15 Mr. Cicero or to Mr. Suraci during their 16 investigation about the iPad? 17 A. You can ask me every person at the shop and 18 the answer is going to be the same. They did not 19 tell me about what their investigation -- what they 20 did during their investigation. So you can ask me 21 every name of the people at Smith &amp; Wesson am I aware 22 of what he said to Mr. Cicero, and the answer is 23 going to be the same. They did not share the 24 information of who they investigated, who they spoke 25 to. All I know is the conclusion they came to is</p>	<p style="text-align: right;">331</p> <p>1 documents, you find that, yes, items were received by 2 Smith &amp; Wesson employees contrary to company policy 3 and contrary to the law. So his -- his conclusions 4 are incorrect because he answers a different question 5 than what was posed. 6 Q. You said -- when we first started talking 7 about this paragraph, you indicated that you felt 8 that this was a -- that the situation you described 9 involving the raffle was a violation of 10 Sarbanes-Oxley. Why do you consider that to be a 11 violation of Sarbanes-Oxley? 12 MR. LEE: Objection to the form of the 13 question, but you can answer if you can. 14 A. I don't believe you're correct in that -- 15 that I said this was evidence of a violation of SOX. 16 I said if it demonstrates quid pro quo, quid pro quo 17 does. But in and of themselves, the items that took 18 place, I didn't view anyone giving or receiving 19 anything improper. What I said was that I felt like 20 the -- if there was a quid pro quo demonstrated in 21 those series of events, that can be evidence of 22 improper influence taking place by a vendor to the 23 people that direct the purchases at Smith &amp; Wesson. 24 Q. Let me have you go to Exhibit 28. That's 25 -- this is in that same binder that you were just</p>
<p style="text-align: right;">330</p> <p>1 incorrect. 2 Q. And what is your basis for contending that 3 the conclusion with respect to the iPad was 4 incorrect? 5 A. I said that the investigation report was 6 incorrect. They had misrepresented some things in 7 there relative to the iPad. I didn't -- they said, 8 Oh, Mr. Flatley didn't receive the -- well -- and 9 that somehow inferred that their conclusion was 10 nothing wrong occurred. If they looked at -- just as 11 you prompted me on not listening to the question, 12 they didn't listen to what -- what I had testified. 13 I told them that I never saw Mr. Flatley 14 receive anything improper. So I didn't witness 15 anything improper. What I witnessed was a series of 16 events that pointed to quid pro quo where a vendor is 17 fixing a raffle to give -- give something to the 18 higher ranking Smith &amp; Wesson people. And they, in 19 turn, said the answer to the -- to my -- what I had 20 told them was that Flatley claims he never received 21 it. 22 Well, that isn't even the question at hand. 23 The question at hand was were they giving improper 24 gifts to people at Smith &amp; Wesson and did they 25 receive them. And if his very -- in -- in subsequent</p>	<p style="text-align: right;">332</p> <p>1 looking at. I'll give you a chance to look at the 2 exhibit. 3 A. I see it. 4 Q. Exhibit 28 is a March 7, 2014 email from 5 you to Mr. Suraci, correct? 6 A. I'm sorry. I was on the wrong page. Okay. 7 Yes. 8 Q. And the first line says, Ed, I was given a 9 gift card from a representative of one of our 10 vendors. 11 Who provided the gift card to you? 12 A. Carl Hynes. 13 Q. And how did he provide it to you? 14 A. He handed it to me in a card. 15 Q. What kind of card? 16 A. A holiday card. 17 Q. And when did he provide that card to you? 18 A. I would assume prior to the holidays. 19 Q. And by "the holidays," you're talking about 20 the Christmas holidays? 21 A. Yes. 22 Q. And why were you providing the card to 23 Mr. Suraci at this point? 24 A. Because I wasn't sure what to do with it. 25 It was deemed inappropriate based on the LRN</p>

<p style="text-align: right;">333</p> <p>1 training. LRN is a training that we were required to  2 take that listed the -- that anything above a nominal  3 value was in violation of gifts. That then would be  4 considered a bribe, that amount, after I had to refer  5 to it. So if it was under the amount of nominal, it  6 wouldn't be improper. But if it was above the  7 amount, it would be deemed improper.</p> <p>8 So based on the LRN training, which I had  9 to go back and look at, it was \$99. This gift card  10 was for \$100. So was it actually considered nominal  11 or was it -- was it considered above nominal? So in  12 my estimation, I determined that it was above the  13 amount.</p> <p>14 There was also the issue that -- my primary  15 job at Smith &amp; Wesson was running my department. I  16 put that in my briefcase, and I can honestly say I  17 didn't really look at it for a while. I went to  18 investigate to see if it was nominal or not. Once I  19 determined that it was above the nominal amount --  20 there's got to be a cutoff someplace. They  21 determined it would be \$99, so in my mind, it was  22 above. So I provided it to him.</p> <p>23 This letter was written after the fact as  24 well. I gave the card to Mr. Suraci. And then  25 subsequently, he asked me to write an email that</p>	<p style="text-align: right;">335</p> <p>1 bring Mr. Cicero in. It was Mr. Suraci after he  2 mentioned the statement where there's smoke, there's  3 fire. And he believed in his mind that -- or  4 represented to me and in his mind, this represented  5 something that made it more serious that he felt  6 legal should be involved. And because it was going  7 to be a confidential submission, he even asked my  8 permission if he could involve Mr. Cicero, and I told  9 him yes.</p> <p>10 Q. And earlier in your testimony, you said  11 that the gift card had been deemed inappropriate  12 under the LRN. Who deemed it inappropriate?</p> <p>13 A. Based on what I saw in the LRN, it  14 mentioned -- I wasn't sure if the -- it mentioned the  15 exact amount. If my recollection was correct, and it  16 was, that it mentioned an amount of \$99. Anything  17 above that was not -- was considered not nominal in  18 their terms. So based on what I read, it was my  19 determination that the LRN had considered that above  20 the limit for a nominal value.</p> <p>21 Q. And did you speak with Mr. Cicero about the  22 gift card?</p> <p>23 A. As I mentioned, I -- since that was the  24 impetus for me to talk to Mr. Cicero, I believe I may  25 have.</p>
<p style="text-align: right;">334</p> <p>1 would give him some documentation to turn the thing  2 in. So the email wasn't written at the same time I  3 gave him that -- that envelope. He asked me after  4 the fact that he needed an email that would represent  5 to whoever he was going to give this thing to a trail  6 so that they -- he could represent to whoever he was  7 giving it to that this is how we -- he -- he ended up  8 with it.</p> <p>9 So I hope that answers your question.</p> <p>10 Q. When did you originally provide the gift  11 card to Mr. Suraci?</p> <p>12 A. Sometime between the holiday and when this  13 was written. I can't even tell you the number of  14 days afterwards he said could you -- could you  15 provide me the email so I'll -- I'll have something.  16 So I went back to my office and sent him this email.</p> <p>17 Q. And did you -- and do you know what  18 Mr. Suraci did with the gift card?</p> <p>19 A. No, I do not.</p> <p>20 Q. And did you talk with Mr. -- Mr. Cicero  21 also about the gift card?</p> <p>22 A. I may have. The gift card was part of the  23 impetus behind -- Mr. Suraci felt that we needed to  24 escalate my submissions to the point where legal  25 would be involved. It wasn't my determination to</p>	<p style="text-align: right;">336</p> <p>1 Q. And do you know what Mr. Cicero or  2 Mr. Suraci did to investigate the situation with the  3 gift card?</p> <p>4 A. No, I do not.</p> <p>5 Q. And do you consider the gift card to be a  6 violation of Sarbanes-Oxley?</p> <p>7 A. Had I accepted it and used it, I believe it  8 would have.</p> <p>9 Q. Why do you believe that?</p> <p>10 A. Because if I'm accepting gifts that are  11 above nominal value and I am someone who directs  12 purchases at Smith &amp; Wesson, it may inadvertently  13 influence me towards that vendor. That's why the  14 company had put that into their -- their company  15 policy.</p> <p>16 Q. Um-hmm. Now, you also raised a concern  17 about the receipt of Red Sox -- your receipt of Red  18 Sox tickets, right?</p> <p>19 A. Yes.</p> <p>20 Q. Did you determine that they were not  21 provided to you by Pioneer?</p> <p>22 A. I didn't determine who they were provided  23 by.</p> <p>24 Q. When did you first receive the tickets?</p> <p>25 A. I can't tell you the date.</p>



Baker, Earl Donald - Vol. II

September 25, 2020

24 (Pages 337 to 340)

<p style="text-align: right;">337</p> <p>1 Q. What year was it?</p> <p>2 <b>A. I don't -- I really don't know the date.</b></p> <p>3 <b>So it'd either be late '13 or early '14. I really</b></p> <p>4 <b>don't know.</b></p> <p>5 Q. This was not related to the raffle, right?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Okay. How did you receive them?</p> <p>8 <b>A. In an envelope addressed to my -- my house</b></p> <p>9 <b>or my apartment. And no return address, just a blank</b></p> <p>10 <b>envelope with tickets in --</b></p> <p>11 THE COURT REPORTER: Say that again. Just</p> <p>12 a blank envelope?</p> <p>13 THE DEPONENT: Just a blank envelope sent</p> <p>14 to my apartment.</p> <p>15 BY MS. BERTRAM:</p> <p>16 Q. And did you do anything to determine who</p> <p>17 had sent them to you?</p> <p>18 <b>A. No. I told my boss.</b></p> <p>19 Q. You told Larry Flatley?</p> <p>20 <b>A. I'm not sure who I -- I told specifically.</b></p> <p>21 <b>I know I -- I couldn't receive them. I tried to even</b></p> <p>22 <b>give them to -- to members of the upper management.</b></p> <p>23 <b>And -- so I -- I mentioned it to a number of</b></p> <p>24 <b>people. I even believe I -- I mentioned it to</b></p> <p>25 <b>Mr. Debney.</b></p>	<p style="text-align: right;">339</p> <p>1 <b>for a fact. You get baseball tickets in the mail and</b></p> <p>2 <b>based on other circumstances taking place within the</b></p> <p>3 <b>company, that was my assumption.</b></p> <p>4 THE COURT REPORTER: Okay. Hold on for a</p> <p>5 second.</p> <p>6 BY MS. BERTRAM:</p> <p>7 Q. And --</p> <p>8 THE COURT REPORTER: Mr. Baker, can you</p> <p>9 just speak up a little? I'm having a hard</p> <p>10 time --</p> <p>11 THE DEPONENT: Sure.</p> <p>12 THE COURT REPORTER: Thanks.</p> <p>13 BY MS. BETRAM:</p> <p>14 Q. And -- and did you talk with Mr. Suraci</p> <p>15 about the Redskins tickets?</p> <p>16 <b>A. Red Sox?</b></p> <p>17 Q. Red Sox. Sorry.</p> <p>18 <b>A. Okay. Yes, I -- I mentioned it to</b></p> <p>19 <b>Mr. Cicero and Mr. Suraci.</b></p> <p>20 Q. Did you consider the tickets to be a</p> <p>21 violation of Sarbanes-Oxley?</p> <p>22 <b>A. They could be.</b></p> <p>23 Q. And how would that -- how would they be a</p> <p>24 violation of Sarbanes-Oxley?</p> <p>25 <b>A. If I accepted them and I was directing</b></p>
<p style="text-align: right;">338</p> <p>1 THE COURT REPORTER: Mr. Who?</p> <p>2 THE DEPONENT: Mr. Debney was the CEO.</p> <p>3 BY MS. BETRAM:</p> <p>4 Q. When and how did you tell him about it?</p> <p>5 <b>A. I walked to his office, said I have tickets</b></p> <p>6 <b>to the -- to the game. It was provided by a vendor.</b></p> <p>7 <b>I could not go. Would he be interested in them? And</b></p> <p>8 <b>in that fashion, I offered the tickets figuring I</b></p> <p>9 <b>felt like it wasn't my -- wasn't something I could</b></p> <p>10 <b>do, but if someone else received them and they were</b></p> <p>11 <b>from a vendor, but yet they had no -- no knowledge of</b></p> <p>12 <b>that vendor, they wouldn't be influenced by that</b></p> <p>13 <b>vendor.</b></p> <p>14 <b>So I tried to give it to Mr. Debney, all</b></p> <p>15 <b>the members that were in the upper office, they could</b></p> <p>16 <b>not go, but then a member of our safety team could go</b></p> <p>17 <b>and did take the tickets.</b></p> <p>18 Q. Who was that?</p> <p>19 <b>A. I don't recall his name exactly. I only</b></p> <p>20 <b>had brief interactions with him, but I had to go</b></p> <p>21 <b>pretty far down the chain before I found somebody</b></p> <p>22 <b>that was available.</b></p> <p>23 Q. And how do you know that the tickets were</p> <p>24 provided to you by a vendor?</p> <p>25 <b>A. You're -- good point. I -- I don't know</b></p>	<p style="text-align: right;">340</p> <p>1 <b>purchases at Smith &amp; Wesson, it could be used as a</b></p> <p>2 <b>leverage to gain favoritism by some vendor at some</b></p> <p>3 <b>point.</b></p> <p>4 Q. And -- and do you know what the face value</p> <p>5 of the tickets were?</p> <p>6 <b>A. I don't know what the face value was.</b></p> <p>7 Q. Do you know if it was over \$100?</p> <p>8 <b>A. My assumption would be yes. And this was</b></p> <p>9 <b>during their first World Series run. So I would</b></p> <p>10 <b>imagine the street value of them at that time would</b></p> <p>11 <b>probably be in the thousands.</b></p> <p>12 Q. Right. But you don't know how much the</p> <p>13 individual or company that purchased them paid for</p> <p>14 them, correct?</p> <p>15 <b>A. No, but I -- I -- I believe it was above</b></p> <p>16 <b>the \$100 apiece, which would violate the \$99 nominal</b></p> <p>17 <b>value that I was taught.</b></p> <p>18 Q. And you said that you mentioned the tickets</p> <p>19 to Mr. Cicero and Mr. Suraci. I take it from your</p> <p>20 prior testimony that you do not know what they did to</p> <p>21 investigate?</p> <p>22 <b>A. No.</b></p> <p>23 MS. BETRAM: Do we want to go ahead and</p> <p>24 take a break for lunch now? It's -- it's 12 --</p> <p>25 12:12.</p>



Baker, Earl Donald - Vol. II

September 25, 2020

25 (Pages 341 to 344)

<p style="text-align: right;">341</p> <p>1 MR. LEE: Sure. How much time would you 2 like, Earl? 3 THE DEPONENT: Jan, we're going to take a 4 lunch. What -- how much time do you want? 5 Whatever you think, John, is fine. I'm at 6 home, so it's easier for me to get food. 7 MR. LEE: Okay. Why don't we just get back 8 together in about half an hour. 9 MS. BERTRAM: Sounds good. So that would 10 be about 12:45. 11 MR. LEE: Sure. 12 MS. BETRAM: Okay. See you then. 13 THE VIDEOGRAPHER: Going off the record at 14 12:12 P.M. 15 (A lunch break was had.) 16 THE VIDEOGRAPHER: Back on the record at 17 12:50 P.M. 18 BY MS. BETRAM: 19 Q. Mr. Baker, if you could turn to Exhibit 32. 20 And I'll give you a chance to read through it. 21 (Sotto voce discussion.) 22 A. Okay. 23 Q. Exhibit 32 is a March 18, 2014 email from 24 you to Mr. Suraci, right? 25 A. Yes.</p>	<p style="text-align: right;">343</p> <p>1 that were quite a bit less and we -- we felt maybe 2 that had been pay -- paying too much. And I can say 3 that there were a lot of incidences where we were 4 constantly looking for a way to save and there were a 5 number of vendors that were, let's say, paying more 6 than what I would pay if it was mine, but I don't 7 know that all of them rose to the level of being 8 exorbitant enough to be -- have someone else look 9 into it. 10 Q. And did you feel that Mosher was engaging 11 in fraud on Smith &amp; Wesson? 12 A. I thought it might be just based on the 13 numbers I list in that email. 14 Q. And did you make a determination beyond the 15 email that you forwarded to Mr. Suraci? 16 A. I did actually bring it up with the vendor, 17 and he seemed to believe that it wasn't an apples to 18 apples comparison. And so he seemed to justify, you 19 know, why they were charging more. I -- I don't know 20 if it's a hundred percent that way, but I -- I felt 21 it -- it made enough of an explanation that it fell 22 into that gray area. It possibly might be an 23 overcharge but maybe went from that area of 24 overcharge to possibly just -- you know, from fraud 25 to overcharge.</p>
<p style="text-align: right;">342</p> <p>1 Q. And you were forwarding an email that you 2 sent to Mr. Flatley earlier that day, right? 3 A. Yes. 4 Q. And did you provide this to Mr. Suraci to 5 show your performance in terms of cost savings or 6 because of any concern of fraud? 7 A. I felt more as if it was something that 8 needed to be looked into. Are we paying too much for 9 all of these things? I just felt that this was an 10 exorbitant thing, and since we were talking about 11 overpayment to vendors, I felt this might be 12 something that needed to be looked into. 13 Q. Okay. And you were talking about the 14 Mosher grinding wheels; is that right? 15 A. Yes. 16 Q. And was Mosher the one that was potentially 17 charging too much for the grinding wheels? 18 A. Yes. 19 Q. And so Pioneer Tool was not involved in 20 this situation, right? 21 A. No. 22 Q. It looks like you were looking at other 23 wheels that could be tested to net a savings. Did 24 you ever identify those wheels? 25 A. Yes. We -- we got some competitive bids</p>	<p style="text-align: right;">344</p> <p>1 Q. Right. And what in your mind 2 differentiated between a situation where it was fraud 3 as opposed to overcharging? 4 A. I can't say that I quantified. I -- I know 5 if you're overcharged a little bit, it's a subjective 6 view that, Gosh, this is -- their prices at this 7 store are high, whereas in contrast, if it were 8 double or triple what you're paying someplace else, 9 you know, you might feel, Gee, that's robbery. You 10 know, somebody's -- you know, it's like fraudulent 11 what they're charging. 12 And I guess it's that subjective line 13 between just paying too much -- 90 percent of what 14 they paid was -- was maybe towards the upper range in 15 the prices. 16 Q. Did you find that kind of across the board 17 at Smith &amp; Wesson? 18 A. I -- I do believe -- 19 MR. LEE: Objection -- objection to the 20 form of the question as to across the board at 21 Smith &amp; Wesson. Earl was a -- in the cutter 22 department. So objection to the form of the 23 question, but you may answer if you can. 24 THE DEPONENT: I do think that across the 25 board, I didn't really see, you know, all of what</p>

<p style="text-align: right;">345</p> <p>1 they purchased.</p> <p>2 But just going experientially, the things</p> <p>3 that I did see, the one thing that Mr. Francis</p> <p>4 told me about boxes being purchased at 10 times</p> <p>5 what he sourced them for made me at least believe</p> <p>6 that it was across the board.</p> <p>7 There is also a conversation between myself</p> <p>8 and Mr. O'Brien where he inferred that even the</p> <p>9 contracts for facilities, let's say, working on</p> <p>10 the air conditioner, that he felt there were some</p> <p>11 improprieties that might rise to the level of</p> <p>12 fraud, but he never gave me details, and that was</p> <p>13 not in my view, so I never reported the -- you</p> <p>14 know, the things he was asserting myself.</p> <p>15 BY MS. BETRAM:</p> <p>16 Q. What was Mr. O'Brien's position when --</p> <p>17 when you were working at Smith &amp; Wesson?</p> <p>18 A. He was a pre-setter.</p> <p>19 Q. And he didn't work in the cutter</p> <p>20 department, right?</p> <p>21 A. Yes. Physically, he worked in a different</p> <p>22 department, but he was part of our -- our -- my</p> <p>23 department in that I offered cutter support. And</p> <p>24 pre-setter sets the tools to a given length. So that</p> <p>25 was part of cutter support. So he was in my</p>	<p style="text-align: right;">347</p> <p>1 and myself. It -- it just followed an incident where</p> <p>2 Flatley was openly hostile and he -- every -- when</p> <p>3 you're dealing with people, you can find little</p> <p>4 reasons that, Oh, I may have said this to make -- to</p> <p>5 cause that reaction. But when there's no cause and</p> <p>6 effect relationship, you can't figure out why</p> <p>7 somebody is going off, it was Leo's assertion that he</p> <p>8 felt the animosity that Mr. Flatley was displaying</p> <p>9 was -- had to do with I had interrupted what he</p> <p>10 believed a fraudulent arrangement between he and</p> <p>11 Pioneer.</p> <p>12 Q. And -- so you spoke with him on May 14 of</p> <p>13 2014?</p> <p>14 A. Yes.</p> <p>15 Q. Was that the first time that he had</p> <p>16 explained that view to you?</p> <p>17 A. No. No. He had -- he had mentioned it</p> <p>18 much prior and, in this instance, he reiterated and</p> <p>19 stated it in a more strong terms. And at this point,</p> <p>20 we were already -- I had already been talking to</p> <p>21 Mr. Cicero. And so when he mentioned this, it stood</p> <p>22 out in my mind as being an important piece of</p> <p>23 information to pass on to Mr. Cicero because he</p> <p>24 talked in terms of more of a firsthand account of</p> <p>25 things, whereas mine was, you know, a mixed bag of</p>
<p style="text-align: right;">346</p> <p>1 department, yes.</p> <p>2 Q. And did -- did he report to you?</p> <p>3 A. Yes.</p> <p>4 Q. And did you do performance evaluations for</p> <p>5 him?</p> <p>6 A. Yes.</p> <p>7 Q. Is that true during the entire period that</p> <p>8 you worked at Smith &amp; Wesson?</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. Okay. Let's go to Exhibit 33, the very</p> <p>11 next one. I'll give you a chance to review it, and</p> <p>12 let me know when you're done.</p> <p>13 A. Okay. I'm familiar with it, yes.</p> <p>14 Q. Okay. Exhibit 33 is a May 14, 2014 email</p> <p>15 from you to Mr. Cicero, right?</p> <p>16 A. Yes.</p> <p>17 Q. And -- and what was your understanding of</p> <p>18 what -- and we'll call him I guess Leo J. -- what</p> <p>19 information he provided to you?</p> <p>20 A. My understanding was that Leo is -- is</p> <p>21 Mr. Jendrezak. We'll just go by Leo.</p> <p>22 Q. Okay.</p> <p>23 A. He was telling me that he felt there was a</p> <p>24 reason for the animosity between -- that was going on</p> <p>25 in -- in the cutting department between Mr. Flatley</p>	<p style="text-align: right;">348</p> <p>1 things I had seen, you know. And so -- and it was of</p> <p>2 my beliefs.</p> <p>3 This, I --</p> <p>4 THE COURT REPORTER: It was what? Sorry.</p> <p>5 It was what?</p> <p>6 THE DEPONENT: It was -- these -- that the</p> <p>7 things I had submitted up to this point were my</p> <p>8 beliefs. And I felt like by telling Mr. Cicero</p> <p>9 about Leo and what he had said, it might give him</p> <p>10 someone else to talk to that may have more</p> <p>11 firsthand information on some of the fraudulent</p> <p>12 things that he had witnessed.</p> <p>13 BY MS. BETRAM:</p> <p>14 Q. Why did you feel that Leo had more direct</p> <p>15 information than you?</p> <p>16 A. He saw what took place before I was here</p> <p>17 and mentioned a tool that we were making for Pioneer</p> <p>18 and then reselling -- them reselling it back to us at</p> <p>19 an exorbitant price. And that he mentioned in his</p> <p>20 terms -- and -- and I can't tell you for sure about</p> <p>21 whether his accounts were true. I'm just telling --</p> <p>22 reporting what he said.</p> <p>23 Q. Um-hmm.</p> <p>24 A. But he said he had witnessed, you know,</p> <p>25 money being put under Mr. Whuk's door and that he had</p>

Baker, Earl Donald - Vol. II

September 25, 2020

27 (Pages 349 to 352)

<p style="text-align: right;">349</p> <p>1 mentioned there were certain people that would have</p> <p>2 more information -- I think he mentioned Stanley</p> <p>3 Kapek, a friend of Stanley Wnuk's, that would have</p> <p>4 more inside information.</p> <p>5 Q. And did Mr. -- did Leo tell you anything</p> <p>6 else that supported his views regarding Pioneer</p> <p>7 Tools?</p> <p>8 A. He didn't tell me specifically, but he had</p> <p>9 mentioned that -- that some of this stuff was</p> <p>10 generally known to people who worked there prior to</p> <p>11 my arrival.</p> <p>12 Q. And did you talk with Stanley Kapek about</p> <p>13 the information that Leo provided to you?</p> <p>14 A. I did.</p> <p>15 Q. Okay. When did you speak with him?</p> <p>16 A. It would have been right after this.</p> <p>17 Q. And what did Mr. Kapek say?</p> <p>18 A. Mr. Kapek had related to me that Stanley</p> <p>19 would always preach something to the point where it</p> <p>20 was like a refrain that he would tell them, Only</p> <p>21 Pioneer work, only Pioneer work.</p> <p>22 So I asked him how would Smith &amp; Wesson</p> <p>23 have enough tools to -- to continue if he was telling</p> <p>24 you to only work on Pioneer. It didn't make sense to</p> <p>25 me. And he said, Well, if we're making Smith &amp;</p>	<p style="text-align: right;">351</p> <p>1 work.</p> <p>2 And that didn't make sense to me until he</p> <p>3 explained then that Pioneer work he was talking about</p> <p>4 would then be issued back to us through the RoboCrib</p> <p>5 so production wouldn't -- wouldn't suffer any for</p> <p>6 lack, that just rather than using a tool that we</p> <p>7 produced that was ours that would be cheaper, they</p> <p>8 would be vending a tool from Pioneer that we had made</p> <p>9 but, yet, because Pioneer own -- owned it, would cost</p> <p>10 Smith &amp; Wesson more.</p> <p>11 Q. And did Mr. Kapek explain to you the basis</p> <p>12 for the information that he was telling you?</p> <p>13 A. No. When I approached him, I said -- I</p> <p>14 told him what Leo had told me and explained that he</p> <p>15 told me that you were friends with Mr. Wnuk and might</p> <p>16 have some firsthand information. But I just let him</p> <p>17 talk, and that's what he -- that's what he related to</p> <p>18 me. So I prefaced it by saying, Here's what I wanted</p> <p>19 to talk to you about, and this was his reply.</p> <p>20 Q. And did he say when this happened that</p> <p>21 Smith &amp; Wesson was making tools that were -- let me</p> <p>22 just back up and -- and make it more simple.</p> <p>23 Did he say when this was happening that --</p> <p>24 A. Yes.</p> <p>25 Q. When -- when was that?</p>
<p style="text-align: right;">350</p> <p>1 Wesson tools for Pioneer because they have our</p> <p>2 proprietary design, they could only be sold back to</p> <p>3 us. So if we only did Pioneer work, it would go in</p> <p>4 the vending machine and we would purchase it back.</p> <p>5 And he didn't say there was a -- a profit involved,</p> <p>6 but it was inferred that if Pioneer ordered a tool</p> <p>7 and sold it back to us that it would be at a higher</p> <p>8 price.</p> <p>9 Now, that's -- that's kind of what he was</p> <p>10 laying out. And the new information I got from</p> <p>11 Stanley was that Mr. Wnuk was constantly telling</p> <p>12 them, Only work on Pioneer tools.</p> <p>13 Q. And -- and what do you mean only work --</p> <p>14 did he explain what he meant by only work on Pioneer</p> <p>15 tools?</p> <p>16 A. Yes, that on each machine, there was a</p> <p>17 priority list of what tools we needed to work on</p> <p>18 every day. You know, they needed to be directed</p> <p>19 on -- on working on things that were relevant to our</p> <p>20 needs. And so he was saying that if they had a</p> <p>21 choice to work on a need that was for Smith &amp; Wesson</p> <p>22 to keep us running on our tool, and that choice was</p> <p>23 between working on our tool or doing outside work for</p> <p>24 Pioneer, he wanted them to concentrate on putting</p> <p>25 those on the highest priorities to do the Pioneer</p>	<p style="text-align: right;">352</p> <p>1 A. He -- he had -- he had mentioned that it</p> <p>2 was prior to my arrival but was nonspecific about</p> <p>3 dates. And so Mr. Wnuk was there for 43 years, so I</p> <p>4 knew it happened prior to me being there. What --</p> <p>5 what caused the shift, whether it was when Stanley</p> <p>6 retired, I don't know. I just knew it was a practice</p> <p>7 that was no longer being done when I got there.</p> <p>8 And we -- Mr. Wnuk and I worked together</p> <p>9 for a number of months, but Stanley indicated that it</p> <p>10 wasn't currently going on anymore.</p> <p>11 MR. LEE: Can I -- there are two Stanleys.</p> <p>12 You -- you -- you kept go --</p> <p>13 THE DEPONENT: Yes.</p> <p>14 MR. LEE: So Stanley Wnuk and Stanley</p> <p>15 Kapek.</p> <p>16 THE DEPONENT: Yes.</p> <p>17 MR. LEE: Not that it matters. I don't</p> <p>18 care about -- the record is the record, but you</p> <p>19 mentioned Stanley a number of times, and I wasn't</p> <p>20 sure which Stanley you were talking about.</p> <p>21 THE DEPONENT: I'm sorry. Yes.</p> <p>22 MR. LEE: That's all right.</p> <p>23 THE DEPONENT: Stanley Kapek was telling me</p> <p>24 about practices that happened when Stanley Wnuk</p> <p>25 controlled the department. I hope that clarifies</p>

Baker, Earl Donald - Vol. II

September 25, 2020

28 (Pages 353 to 356)

<p style="text-align: right;">353</p> <p>1 it.</p> <p>2 BY MS. BETRAM:</p> <p>3 Q. I understand. And did Ms. -- did -- did</p> <p>4 Leo tell you the basis for the information he</p> <p>5 provided to you about repurchasing tools?</p> <p>6 <b>A. He said he personally witnessed an envelope</b></p> <p>7 <b>which he confused as money being passed under the</b></p> <p>8 <b>door, and he mentioned one tool in particular that he</b></p> <p>9 <b>said Dwayne Reese worked on that Dwayne had found out</b></p> <p>10 <b>in some fashion -- I don't even know how -- that we</b></p> <p>11 <b>were producing it for -- for Pioneer and charging</b></p> <p>12 <b>them \$3 a cover. They were, in turn, selling it back</b></p> <p>13 <b>to Smith &amp; Wesson in the vending machine at \$40</b></p> <p>14 <b>apiece.</b></p> <p>15 I did talk to Dwayne Reese, but I don't</p> <p>16 have any documentation on those numbers but passed</p> <p>17 the information on to Mr. Cicero and Mr. Suraci to --</p> <p>18 for them to investigate and find out if they talked</p> <p>19 to these individuals and maybe could link up their</p> <p>20 account with past purchases and so forth so that I</p> <p>21 felt like I was giving them the basis for them to</p> <p>22 investigate.</p> <p>23 Q. All right. And what was the tool that --</p> <p>24 that Leo described, if there's one tool?</p> <p>25 <b>A. Yeah, I -- I don't know what -- what the</b></p>	<p style="text-align: right;">355</p> <p>1 <b>A. He made the assumption, but I -- I</b></p> <p>2 <b>corrected him. I said, Did you actually see money?</b></p> <p>3 <b>And he said, No, it was just an envelope.</b></p> <p>4 Q. And did he say when he saw the envelope go</p> <p>5 underneath the door?</p> <p>6 THE COURT REPORTER: Did --</p> <p>7 <b>A. No, he didn't tell me a time frame.</b></p> <p>8 THE COURT REPORTER: Did he say when he saw</p> <p>9 the envelope what?</p> <p>10 MS. BETRAM: Go under the door.</p> <p>11 THE COURT REPORTER: Thank you. And what</p> <p>12 was your answer?</p> <p>13 THE DEPONENT: No he didn't mention any</p> <p>14 time frame.</p> <p>15 THE COURT REPORTER: Thank you.</p> <p>16 BY MS. BETRAM:</p> <p>17 Q. And did he say when the tool -- you know,</p> <p>18 when the situation happened with the one tool that</p> <p>19 Dwayne Reese had worked on?</p> <p>20 <b>A. No, it was -- it was all pretty much</b></p> <p>21 <b>nebulous, just indicated that it was before I got</b></p> <p>22 <b>there.</b></p> <p>23 Q. Okay. And did -- did you say that you</p> <p>24 spoke with Mr. Reese?</p> <p>25 <b>A. Yes, I did.</b></p>
<p style="text-align: right;">354</p> <p>1 tool was. The information I just told you was</p> <p>2 basically what he said. It was kind of general</p> <p>3 terms. He said there was one tool that Dwayne was</p> <p>4 doing and they found out this was the price we</p> <p>5 charge, this was the price we -- you know, what we</p> <p>6 sold it back.</p> <p>7 And I -- when I asked Dwayne, he didn't</p> <p>8 tell me any specific numbers but had confirmed what</p> <p>9 Leo said that in his view, this was what was</p> <p>10 happening, and that he had found out that it was --</p> <p>11 that we were getting \$3 and that they were selling it</p> <p>12 back at 40. So I don't know where he got his</p> <p>13 information.</p> <p>14 And, again, I didn't feel I was the prime</p> <p>15 investigator of this thing. I -- I felt like I -- it</p> <p>16 did color my belief and made me feel that I had done</p> <p>17 the right thing by going to Mr. Cicero and Mr. Suraci</p> <p>18 and Ms. Salvador and Ms. Glica to let them know what</p> <p>19 I had heard so that they could then look into the</p> <p>20 matter and then talk to Mr. Reese and Mr. Jendrezak,</p> <p>21 Leo, and -- and Mr. Kapek.</p> <p>22 Q. So Leo said he did not know what was in the</p> <p>23 envelope, right?</p> <p>24 <b>A. No, he did not.</b></p> <p>25 Q. And did --</p>	<p style="text-align: right;">356</p> <p>1 Q. Okay. And when did you speak with him?</p> <p>2 <b>A. It would have been within the same day I --</b></p> <p>3 <b>I spoke to Mr. Kapek and probably would have been</b></p> <p>4 <b>within 24 hours of -- of speaking to Leo. The only</b></p> <p>5 <b>thing I'm unsure about and could vary a day here or</b></p> <p>6 <b>there because Leo worked kind of halfway into the</b></p> <p>7 <b>afternoon shift where Mr. Kapek and Mr. Reese worked</b></p> <p>8 <b>first shift. So I probably heard this from Leo late</b></p> <p>9 <b>in first shift and Mr. Kapek and Mr. Reese may have</b></p> <p>10 <b>gone home. So I may have talked to them the next day</b></p> <p>11 <b>rather than that day.</b></p> <p>12 Q. And what did Mr. Reese say to you?</p> <p>13 <b>A. Just that he confirmed the general details</b></p> <p>14 <b>that there was a tool and he said that -- he had</b></p> <p>15 <b>mentioned those amounts, the same as Mr. -- as Leo</b></p> <p>16 <b>said, the \$3, sold it for 40, which led me to believe</b></p> <p>17 <b>that they had possibly talked about this in the past.</b></p> <p>18 <b>And the way I took it was that Mr. Reese must have</b></p> <p>19 <b>mentioned this to either Lamonte Parks who worked</b></p> <p>20 <b>right side by side with Leo or he possibly had told</b></p> <p>21 <b>Leo himself. I'm not sure. But that was my -- my</b></p> <p>22 <b>belief and my assumption.</b></p> <p>23 Q. And did Mr. Reese say anything else to you</p> <p>24 when you spoke with him?</p> <p>25 <b>A. No.</b></p>

<p style="text-align: right;">357</p> <p>1 Q. And did you obtain any documents relating 2 to this concern? 3 <b>A. No, I did not.</b> 4 Q. And I take it that you passed along the 5 names of Leo, Mr. Reese and Mr. -- 6 <b>A. Kapek?</b> 7 Q. -- Kapek to Rob Cicero and to Mr. Suraci? 8 <b>A. Yes.</b> 9 Q. And other than what you've described, do 10 you recall the information that you provided to them? 11 <b>A. I don't believe I had any more specific 12 information to provide.</b> 13 Q. Okay. And I take it from your prior 14 testimony, you don't know what they did to 15 investigate that concern? 16 <b>A. No, I didn't.</b> 17 Q. And if -- if -- you don't know if they 18 spoke with the three witnesses that you identified, 19 right? 20 <b>A. I -- I did hear from Dwayne. I asked him 21 had they talked to him, and he said no. I had 22 similarly done the same thing with Leo. I don't 23 believe I asked Stanley. But at the time I talked to 24 Leo, they had not. I was told after the fact when I 25 was on paid leave by Mr. Parks, who called and said</b></p>	<p style="text-align: right;">359</p> <p>1 Q. And why is that? 2 <b>A. It perpetrates a fraud that there is no 3 reason for -- for us to sell a tool to a vendor that 4 can only be used by law to us other than it's a 5 profit scheme. There's no -- if we can produce the 6 tool because we need it, why involve a third party to 7 add a markup to a tool that we produce and we use and 8 only we can use? So if this was true, it would be, 9 in my mind, unequivocally fraud.</b> 10 Q. So let's go to Exhibit 34, which is the 11 next one. 12 <b>A. Okay.</b> 13 Q. And there are a couple of different emails 14 that's in this group. And the first two relate to 15 .213 gun drills; is that right? 16 <b>A. Yes.</b> 17 Q. And the first one is dated April 17, 2014 18 from you to Ed Suraci, correct? 19 <b>A. Yes.</b> 20 Q. And the second one is that same date, 21 again, from you to Mr. Suraci, correct? 22 <b>A. Yes.</b> 23 Q. Oh, actually, they're -- look at it. 24 They're the same -- same document. 25 <b>A. No. I -- I -- I -- I beg to differ. I</b></p>
<p style="text-align: right;">358</p> <p>1 that -- told me that Leo had been called in and that 2 as soon as he got out, he said Mr. Flatley had 3 pointed at Leo as he walked into the building in a 4 threatening way as if to say, I'm going to get you. 5 And those were Mr. Park's words. So I believe I 6 did -- because I wasn't there, I care for the people 7 that worked for me, I considered them my friends, I 8 felt bad that I couldn't do anything to shield them, 9 so I sent a -- an email to Mr. Suraci expressing what 10 I just told you. 11 Q. And when did you speak with -- 12 <b>A. With who?</b> 13 Q. -- Mr. Reese and Leo, and they said they 14 had not yet been contacted; what date was that? 15 <b>A. I really couldn't say. I don't recall.</b> 16 Q. Was it before you went on administrative 17 leave? 18 <b>A. Yes.</b> 19 Q. And you don't know what Leo said to 20 Mr. Suraci or to Mr. Cicero about this concern, 21 right? 22 <b>A. I do not.</b> 23 Q. And do you consider this, if true, to be a 24 violation of Sarbanes-Oxley? 25 <b>A. Absolutely.</b></p>	<p style="text-align: right;">360</p> <p>1 misread it. One is May of '13 and one is April of 2 '17, correct? 3 Q. No, I think you're looking at the -- the 4 date. They're both -- they're the same document. 5 One was printed by Rob Cicero and one was printed by 6 Anna Hart is the only difference between the two of 7 them. 8 MR. LEE: Which -- we're talking about 9 Exhibit 34. Are we comparing it to another 10 exhibit or are we -- 11 MS. BETRAM: No, I was just pointing out -- 12 MR. LEE: It's still within -- yeah. 13 There's two printouts. One says Cicero and one 14 says Anna Hart. 15 MS. BETRAM: Right. 16 BY MS. BETRAM: 17 Q. So let's -- let's focus on the substance. 18 Mr. Baker, in that, you talk about kind of blanket 19 orders, blanket purchase orders for drills; is that 20 right? 21 <b>A. Yes.</b> 22 Q. And your concern here was that they were 23 automatically providing the drills, but there was now 24 excessive inventory, correct? 25 <b>A. Yes.</b></p>



Baker, Earl Donald - Vol. II

September 25, 2020

30 (Pages 361 to 364)

<p style="text-align: right;">361</p> <p>1 Q. And did you consider this to be fraud or a 2 violation of Sarbanes-Oxley or was this more of kind 3 of a performance concern or an FYI on your part? 4 A. It -- it could be both. It was something 5 that in my mind if -- if we were overpaying to that 6 vendor, we also had blanket orders through that same 7 vendor that we had five years of surplus already on 8 hand and we had them coming in weekly and sometimes 9 monthly. So it speaks to both. One was the state of 10 disarray when I got there that no one is watching the 11 henhouse, so to speak. And it possibly could be a 12 case where a vendor was profiting more so than what 13 they deserved because we were overbuying. 14 So, again, that's not for me to determine 15 whether or not it was a case of poor performance on 16 Mr. Wnuk's part or whether it was a case of, you 17 know, over-purchasing in order to give, you know, one 18 customer more business. I -- I don't -- I don't know 19 that. 20 Q. So when did you become aware of the 21 purchase order -- the blanket purchase order issue 22 for the .213 drills? 23 A. All of the drills were overflowing. And 24 when I came in -- and when you say when, I'm trying 25 to preface it by when I first came in, I was tasked</p>	<p style="text-align: right;">363</p> <p>1 we had -- we had blanket orders where they just came 2 in automatically. No one had to send a requisition 3 for them. So that this blanket order had been set up 4 between Mr. Wnuk and the vendor and Mr. Flatley. 5 Because normally -- well, in every case, any purchase 6 by Mr. Wnuk would have to be approved by Mr. Flatley. 7 Q. Um-hmm. 8 A. So whether he, Mr. Flatley, was aware that 9 those purchases were being made, you know, still 10 going -- ongoing, you would think so. But one thing 11 was certain: He signed for it initially. 12 Q. And did you ever determine -- did you ever 13 uncover any evidence as to whether this was 14 intentional on Mr. Wnuk's part? 15 A. No, I didn't. 16 THE COURT REPORTER: Intentional on whose 17 part? 18 MS. BETRAM: Mr. Wnuk, W-n-u-k. 19 THE COURT REPORTER: Thank you. 20 THE DEPONENT: No. 21 BY MS. BETRAM: 22 Q. And I take it you passed along this 23 information to Mr. Suraci. Did you also pass it 24 along to Mr. Cicero? 25 A. I -- I did.</p>
<p style="text-align: right;">362</p> <p>1 with getting Robo 99 computerized. So as I went 2 through that thing to put these items into the 3 computer, I realized that we had so many that we 4 literally had to extend our cage to another room in 5 order to house them all. They just were stacked in 6 boxes. 7 And so by entering them into the computer, 8 which then became our -- our computerized system, we 9 found these. So it was both a claim of showing how 10 bad it was when I got there and this was a 11 performance claim that, yes, I -- I found all this 12 and corrected these purchases but felt that it -- it 13 needed purview of somebody investigating the case to 14 look at it and say why were we purchasing -- 15 And -- and this is -- these drills are \$300 16 apiece. So when we had a seven-year supply, we're 17 talking enough drills to fill a small room. So 18 overage. So this was not like a small thing. This 19 would have been hundreds and hundreds of thousands of 20 dollars. 21 Q. And did you ever, yourself, investigate how 22 it came about that Smith &amp; Wesson had so many drills? 23 A. Again, I didn't -- I didn't investigate 24 like the reasoning behind it. I just investigated 25 well, why do we have so many, and it turned out that</p>	<p style="text-align: right;">364</p> <p>1 Q. And do you know what they did to look into 2 this concern? 3 A. No, I do not. 4 Q. So let's look at the -- the next doc -- 5 next document, same exhibit. And I'll give you a 6 chance to read through the three of them. They're 7 kind of different strings, but they're, you know, 8 related to each other. These are about the -- right, 9 that's also about the .213. Let me go forward to 10 the .915 gun drills. 11 MR. LEE: Are we still in Exhibit 34, 12 Connie? 13 MS. BETRAM: We are. We're -- we're at -- 14 MR. LEE: Just down? Just way down? 15 MS. BETRAM: -- 355. We're at 355 on the 16 bottom. 17 MR. LEE: Okay. Got it. 18 THE DEPONENT: Okay. Your question? I'm 19 sorry. 20 BY MS. BETRAM: 21 Q. This raises some issues about another type 22 of drill that was -- that was on purchase order, 23 correct? 24 A. Yes. All of the different sizes would be 25 the same scenario in that --</p>



Baker, Earl Donald - Vol. II

September 25, 2020

31 (Pages 365 to 368)

<p style="text-align: right;">365</p> <p>1 Q. Okay.</p> <p>2 <b>A. Yeah, they're all the same -- all -- all</b></p> <p>3 <b>the same type.</b></p> <p>4 Q. Okay. I understand.</p> <p>5 Go to Exhibit 35. And I'll give you a</p> <p>6 chance to look over that.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. This raises a concern about whether the</p> <p>9 company was mischarged for a particular tool; is that</p> <p>10 right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And this is an issue that had been raised</p> <p>13 by Mr. Branco, correct, B-r-a-n-c-o?</p> <p>14 <b>A. Yes, um-hmm.</b></p> <p>15 Q. And there's a -- included in the chain is</p> <p>16 an email dated May 30th, 2013 from him to you,</p> <p>17 correct?</p> <p>18 <b>A. Yes, that's correct.</b></p> <p>19 Q. And he just asked a question as to whether</p> <p>20 the company was being charged for two new tools,</p> <p>21 correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And then Steve Wasielewski asked Andrew</p> <p>24 Dziobek to look into this, right?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">367</p> <p>1 Q. On this issue. I'm sorry.</p> <p>2 <b>A. On this issue, no. I did not provide</b></p> <p>3 <b>anything else.</b></p> <p>4 Q. And do you know what conclusions they</p> <p>5 reached in looking into this concern?</p> <p>6 <b>A. I'm sorry. Could you repeat that? My</b></p> <p>7 <b>earpiece was bothering me.</b></p> <p>8 Q. No problem. Do you know what conclusions</p> <p>9 they reached based on -- or actually let me strike</p> <p>10 that.</p> <p>11 Do you know what they did to look into this</p> <p>12 issue?</p> <p>13 <b>A. No, I do not.</b></p> <p>14 Q. And do you know what they concluded?</p> <p>15 <b>A. I don't know if it mentions this in</b></p> <p>16 <b>Mr. Cicero's conclusion or not. I -- I can't recall.</b></p> <p>17 THE COURT REPORTER: Mr. Baker, if you</p> <p>18 could just keep your voice up.</p> <p>19 THE DEPONENT: Okay. Thank you.</p> <p>20 THE COURT REPORTER: Thanks.</p> <p>21 BY MS. BETRAM:</p> <p>22 Q. At some point, did you become aware of a</p> <p>23 concern that Smith &amp; Wesson had been paid -- charged</p> <p>24 eight days for seven days of vending on the RoboCrib?</p> <p>25 <b>A. Yes, ma'am.</b></p>
<p style="text-align: right;">366</p> <p>1 Q. And do you know what Mr. Dziobek determined</p> <p>2 based on looking at the records for this?</p> <p>3 <b>A. I -- I don't know specifically relative to</b></p> <p>4 <b>this email. I -- I know what he said in general, but</b></p> <p>5 <b>he wasn't referring to this one.</b></p> <p>6 <b>So I had a conversation with -- with Andrew</b></p> <p>7 <b>where he mentioned in general, but I don't believe he</b></p> <p>8 <b>had actually looked at Steve's email yet. But he was</b></p> <p>9 <b>saying in general that could be -- he -- where the</b></p> <p>10 <b>machine defaults to giving them one of our tools</b></p> <p>11 <b>first as -- as opposed to Pioneer's. But he wasn't</b></p> <p>12 <b>sure in this specific case because he hadn't actually</b></p> <p>13 <b>investigated the exact tool Steve was speaking about.</b></p> <p>14 <b>But he -- he gave that to me as a possible</b></p> <p>15 <b>explanation for what was happening.</b></p> <p>16 Q. And do you know what he determined once he</p> <p>17 looked into the issue?</p> <p>18 <b>A. No, I do not.</b></p> <p>19 Q. And was this an issue that you raised with</p> <p>20 Mr. Cicero or Mr. Suraci?</p> <p>21 <b>A. I did.</b></p> <p>22 Q. And other than this email, did you provide</p> <p>23 any other evidence to them?</p> <p>24 <b>A. Any other evidence in general or on this</b></p> <p>25 <b>issue?</b></p>	<p style="text-align: right;">368</p> <p>1 Q. And when did you obtain information about</p> <p>2 this concern?</p> <p>3 <b>A. On two occasions; one, Victor Matos told me</b></p> <p>4 <b>about it and then later on, Mr. Goode, Al Goode, told</b></p> <p>5 <b>me the same scenario.</b></p> <p>6 Q. Okay. And when did Mr. Matos tell you</p> <p>7 that?</p> <p>8 <b>A. It would have been months earlier. So I</b></p> <p>9 <b>heard the first account from him. And since</b></p> <p>10 <b>Mr. Goode was Victor Matos's boss, I only saw him on</b></p> <p>11 <b>maybe a quarterly basis.</b></p> <p>12 Q. Um-hmm.</p> <p>13 <b>A. So it would have been a couple of months</b></p> <p>14 <b>after that that I spoke to Mr. Goode.</b></p> <p>15 Q. And Victor Matos was with M -- M -- MC --</p> <p>16 MSC, correct?</p> <p>17 <b>A. Yes. Yes.</b></p> <p>18 Q. Okay. And do you recall when he told you</p> <p>19 about this concern about the eight-day billing</p> <p>20 situation?</p> <p>21 <b>A. I -- I don't recall the exact date, no.</b></p> <p>22 <b>And it -- it's a long time ago, and had you asked me</b></p> <p>23 <b>years ago, I might. I'd have a recollection. But I</b></p> <p>24 <b>can't tell you the exact date he told me.</b></p> <p>25 Q. And what did -- what did Mr. Matos tell you</p>

<p style="text-align: right;">369</p> <p>1 about the eight-day billing situation?</p> <p>2 <b>A.</b> The account he gave me was that -- that</p> <p>3 Pioneer was billing Smith &amp; Wesson eight days a week</p> <p>4 and that it resulted in a couple of hundred thousand</p> <p>5 dollars in overcharges so that they were charging</p> <p>6 from Sunday through Sunday so that they were charging</p> <p>7 Sunday twice.</p> <p>8 And that went on for such a long time with</p> <p>9 no one realizing it that they had -- they had</p> <p>10 informed MSC -- or I mean informed Pioneer -- God, I</p> <p>11 keep getting the wrong -- they informed Smith &amp;</p> <p>12 Wesson, and that because of that information, that</p> <p>13 their work was -- workload was cut by Mr. Flatley so</p> <p>14 much so that he -- they had to lay off an entire</p> <p>15 night shift of their plant in -- in Chicopee,</p> <p>16 Massachusetts because the work they had been getting,</p> <p>17 they had gradually added another shift, and that</p> <p>18 after they informed on Pioneer doing this, that there</p> <p>19 was a reprisal against his company, MSC, and work was</p> <p>20 taken away, and they had to lay off their entire</p> <p>21 night shift.</p> <p>22 That account would have been fairly early</p> <p>23 in September 2013, but the exact date, I don't know.</p> <p>24 But it -- it was very early in the -- my being at</p> <p>25 Smith &amp; Wesson.</p>	<p style="text-align: right;">371</p> <p>1 got from Victor. I -- I -- in that case, I didn't</p> <p>2 learn any new information. Just said the same thing</p> <p>3 as Victor said and probably did not mention the</p> <p>4 having to lay people off or the reprisal of taking</p> <p>5 work away. He just told me the -- the scenario that,</p> <p>6 yes, they had told Smith &amp; Wesson about the billing.</p> <p>7 And he mentioned the eight days a week.</p> <p>8 Q. And other than speaking with Mr. Matos and</p> <p>9 speaking with Mr. Goode, did you do anything to</p> <p>10 investigate this concern?</p> <p>11 <b>A.</b> I re -- I recounted -- or told the incident</p> <p>12 to Mr. Cicero, and Mr. Cicero told me that was old</p> <p>13 news and --</p> <p>14 Q. Um-hmm.</p> <p>15 <b>A.</b> -- that was the end of it.</p> <p>16 Q. And do you know what Mr. Cicero did to look</p> <p>17 into your concern?</p> <p>18 <b>A.</b> In -- in this concern, he had related to me</p> <p>19 that it was old news and it was already handled.</p> <p>20 Q. Um-hmm. And did you ever obtain any</p> <p>21 documents related to the -- the eight-day billing</p> <p>22 concern?</p> <p>23 <b>A.</b> No.</p> <p>24 Q. And other than speaking with Mr. Cicero,</p> <p>25 did you raise this concern with anybody else at Smith</p>
<p style="text-align: right;">370</p> <p>1 Q. And did he -- did Mr. Matos tell you when</p> <p>2 they informed Smith &amp; Wesson of the eight-day billing</p> <p>3 issue?</p> <p>4 <b>A.</b> No. No. He did -- he told me that it</p> <p>5 happened prior to me being there, but the time frame</p> <p>6 of when that happened, I wasn't aware. But he did</p> <p>7 say that at the time that occurred, that's when they</p> <p>8 took Ed Prystupa from being the purchaser in that</p> <p>9 department and they hired Andrew Dziobek. And so</p> <p>10 Andrew had -- was hired -- I think you can find from</p> <p>11 his testimony what -- what his date of hire was, but</p> <p>12 that would give you the date of when he was referring</p> <p>13 to.</p> <p>14 Q. And did Mr. Matos tell you anything else</p> <p>15 about the eight-day billing concern?</p> <p>16 MR. LEE: Objection to form of the</p> <p>17 question, but you may answer if you can.</p> <p>18 <b>A.</b> To my recollection, that's the gist of what</p> <p>19 he told me.</p> <p>20 Q. Okay. And you said that you spoke with Al</p> <p>21 Goode several months later; is that right?</p> <p>22 <b>A.</b> Yes.</p> <p>23 Q. And what did Mr. Goode tell you?</p> <p>24 <b>A.</b> He reiterated the fact that -- he just re</p> <p>25 -- reclaimed -- or rehashed the same account that I</p>	<p style="text-align: right;">372</p> <p>1 &amp; Wesson?</p> <p>2 <b>A.</b> No.</p> <p>3 Q. Pardon me?</p> <p>4 <b>A.</b> No.</p> <p>5 Q. Okay. And when did you speak with</p> <p>6 Mr. Cicero about this?</p> <p>7 <b>A.</b> I -- I had a few personal meetings with</p> <p>8 him. I -- I don't know which one it was. My</p> <p>9 inclination would be that it was one of the later</p> <p>10 ones. But I do know that it was not a phone</p> <p>11 conversation or text. It was when I was sitting in</p> <p>12 his office I recounted it to him.</p> <p>13 Q. And are you aware of an internal audit that</p> <p>14 was conducted relating to the eight-day billing</p> <p>15 issue?</p> <p>16 <b>A.</b> I am aware of an internal audit report but</p> <p>17 only over the last few weeks.</p> <p>18 Q. It's not something that you saw when you</p> <p>19 were employed by Smith &amp; Wesson?</p> <p>20 <b>A.</b> No.</p> <p>21 Q. And as you were speaking with the</p> <p>22 representatives of MSC about this issue, did they</p> <p>23 inform you that the problem had resulted in MSC</p> <p>24 overcharging for tools?</p> <p>25 <b>A.</b> They actually had a different account than</p>

<p style="text-align: right;">373</p> <p>1 what Mr. Cicero gave in his report. Or I -- I --</p> <p>2 maybe an email that I read from Mr. Upson, Derek</p> <p>3 Upson, to Mr. Cicero explaining that this was an</p> <p>4 overcharge paid to MSC but that is stark -- starkly</p> <p>5 contradicted by what Mr. Goode told me.</p> <p>6 Q. Right. And you only -- you only saw what</p> <p>7 Mr. Upson had to say in connection with discovery in</p> <p>8 this case, correct?</p> <p>9 A. That's correct, yes.</p> <p>10 Q. So one of the concerns that you raised</p> <p>11 earlier in this deposition and then during your prior</p> <p>12 day of deposition was that a vendor was providing --</p> <p>13 had provided 10 TVs --</p> <p>14 A. Yes.</p> <p>15 Q. -- to employees of Smith &amp; Wesson. When</p> <p>16 did you first become aware of that concern?</p> <p>17 A. I was approached by a former driver of</p> <p>18 Pioneer. I don't know when it was. It would have</p> <p>19 been late in the situation when my wife and I were at</p> <p>20 a Walmart. But I -- I don't -- I don't know the</p> <p>21 date. It would just be late in the process.</p> <p>22 Q. It was in 2014; is that right?</p> <p>23 A. Yes. Yeah, it'd be 2014 after I had been</p> <p>24 talking to Mr. Cicero. I recounted it to him. If it</p> <p>25 happened prior to -- I know it was at least during</p>	<p style="text-align: right;">375</p> <p>1 A. He -- he told me that he was told to pick</p> <p>2 up 10 TVs. He said one or two of them may have been</p> <p>3 for Colt, which is another manufacturer. So he</p> <p>4 wasn't sure of the number, one or two. So the actual</p> <p>5 number that went to Smith &amp; Wesson would have been</p> <p>6 eight or nine TVs. And he said he was instructed to</p> <p>7 deliver them directly to the bosses' homes but not to</p> <p>8 bring them to the plant.</p> <p>9 Q. Did he identify the names of the Smith &amp;</p> <p>10 Wes -- Smith &amp; Wesson managers who received them?</p> <p>11 A. I asked him that. He said he didn't know</p> <p>12 names. He only had their home addresses.</p> <p>13 Q. And did he provide their home addresses to</p> <p>14 you?</p> <p>15 A. No. He -- he didn't recall addresses. He</p> <p>16 just said the -- said, yeah, he didn't know any</p> <p>17 names. He just delivered them to their houses.</p> <p>18 Q. And how did he know that they were Smith &amp;</p> <p>19 Wesson managers?</p> <p>20 MR. LEE: Objection to the form of the</p> <p>21 question. Calls for speculation. But if you can</p> <p>22 answer, you can answer.</p> <p>23 BY MS. BETRAM:</p> <p>24 Q. Let me just rephrase the question.</p> <p>25 Did he say how he knew that they were eight</p>
<p style="text-align: right;">374</p> <p>1 the period where I was speaking with Mr. Sura -- or</p> <p>2 Cicero making him aware of the details.</p> <p>3 Q. Um-hmm. Now, how did you know that he was</p> <p>4 -- hold on one second. I've just got to open a door.</p> <p>5 How did you know that the person that</p> <p>6 approached you and your wife in the Walmart was a</p> <p>7 former driver for Pioneer Tools?</p> <p>8 A. All I -- all I was aware was that's what he</p> <p>9 purported. He did know the names of the individuals,</p> <p>10 and it had to have been somewhat prior to my</p> <p>11 employment because he -- he mentioned the owner sent</p> <p>12 him to get the tools where these -- or the TVs where</p> <p>13 he sent them, and he mentioned that person as being</p> <p>14 Buck Upson. Right along the time when I started at</p> <p>15 Smith &amp; Wesson, Buck Upson was transferring owner --</p> <p>16 ownership of Pioneer Tool to -- from himself to his</p> <p>17 nephew, Derek Upson. I even attended his retirement</p> <p>18 party. So it happened just as I came on.</p> <p>19 So I know that the account the person was</p> <p>20 telling me about transpired prior to my arrival.</p> <p>21 Q. What else did the person say who approached</p> <p>22 you in the Walmart parking lot?</p> <p>23 A. No, it was actually in the store. I'm</p> <p>24 sorry.</p> <p>25 Q. Okay. And what else did he say?</p>	<p style="text-align: right;">376</p> <p>1 or nine managers at Smith &amp; Wesson?</p> <p>2 A. I -- I don't know how he -- you know, I --</p> <p>3 I just passed it on as here's what was said to me,</p> <p>4 and I -- I assumed that Mr. Cicero and possibly</p> <p>5 someone else in security at Smith &amp; Wesson would</p> <p>6 investigate and find out the veracity -- he had a lot</p> <p>7 of details that seemed to be correct, and I thought</p> <p>8 they would investigate to find out whether, in fact,</p> <p>9 it -- it -- it did occur.</p> <p>10 Q. And how did he approach you?</p> <p>11 A. It was weird. It was -- I -- I actually</p> <p>12 made a police report with the Enfield Police because</p> <p>13 I thought it was odd that a person approached me as I</p> <p>14 was exiting -- I was actually in checkout. He</p> <p>15 approached me as I was exiting, and he was coming in</p> <p>16 the door. And then he said he -- he knew me. He</p> <p>17 recognized me. And I had never seen him before. And</p> <p>18 I told him he had been -- must have been mistaken. I</p> <p>19 -- I'm originally from Ohio. And he then said that</p> <p>20 he worked for Pioneer Tool and that he thinks he saw</p> <p>21 me at Smith &amp; Wesson.</p> <p>22 He worked there prior to my arrival. He</p> <p>23 couldn't have seen me.</p> <p>24 Q. Um-hmm.</p> <p>25 A. So when I left -- so I -- after our</p>

<p style="text-align: right;">377</p> <p>1 encounter, he mentioned an individual at Smith &amp;  2 Wesson, Buddy Duval that I had never met before and I  3 had never heard the name. So I just passed that off  4 and I went to -- you know, purchased my items, went  5 to my car. I noticed then he got in his car and  6 followed me to Enfield, Connecticut. I was in  7 Windsor Locks, Connecticut at the Walmart. He  8 followed me into Enfield.</p> <p>9 I thought it was odd that someone who had  10 never met me, thought he knew me, gave me specific  11 information about Pioneer Tool, and then followed me  12 back towards my house. If he was coming into the  13 store as I was exiting, how was he able to get to his  14 car at the same time as I was if he had purchased  15 something? There wouldn't have been time for him to  16 wait through a line and purchase something. He had  17 to -- as soon as he got done talking to me, he had to  18 exit and get in his car at the same time I did in  19 order to leave at the same time.</p> <p>20 I thought that was odd, and I didn't  21 understand what it was, but I did make a police  22 report on it. I went to the Enfield Police  23 Department and made a report.</p> <p>24 The issue was I told Mr. Cicero at the time  25 believing he was actually investigating things and</p>	<p style="text-align: right;">379</p> <p>1 Q. And was anybody else present when this  2 person approached you in the Walmart?</p> <p>3 A. Yes, my wife.</p> <p>4 Q. And did she say anything --</p> <p>5 A. No.</p> <p>6 Q. -- to him?</p> <p>7 A. She -- she didn't -- she didn't even stay  8 for the whole conversation. I don't recall if she  9 had to go pay for what we were buying or -- or what  10 it was, but I know that she was there for part of the  11 conversation, but she didn't hear all of it.</p> <p>12 He had -- it was somewhat of a natural  13 conversation. He -- he seemed sincere about what he  14 was saying because he was talking about things that  15 he did with his friend, Buddy Duval.</p> <p>16 So I -- I included that information to  17 Mr. Cicero just so he would have some context to what  18 was shared, but I never heard of a Buddy Duval. And  19 I did ask a few people when I got back, and they had  20 never heard of Buddy Duval.</p> <p>21 Q. And did he --</p> <p>22 A. Now --</p> <p>23 Q. Did he say that he had delivered a TV to  24 Buddy Duval? What -- what was --</p> <p>25 A. No, no.</p>
<p style="text-align: right;">378</p> <p>1 thought that he would -- he would have enough  2 information to look into it.</p> <p>3 Q. So how long of a drive is it from the  4 Walmart to Enfield, Connecticut?</p> <p>5 A. Not long. It's -- it's probably only a  6 couple exits.</p> <p>7 Q. Okay. And did you record the license plate  8 number for the person who approached you?</p> <p>9 THE COURT REPORTER: I'm sorry.</p> <p>10 Ms. Bertram, you're breaking up for me. I don't  11 know if it's for anybody else.</p> <p>12 MS. BETRAM: I'll restate the question.</p> <p>13 THE COURT REPORTER: Thank you. That  14 sounds better too.</p> <p>15 BY MS. BETRAM:</p> <p>16 Q. Did you record the name of the license  17 plate of the person who'd approached you at the  18 Walmart?</p> <p>19 A. No, I did -- didn't have an opportunity to  20 do so.</p> <p>21 Q. Why is that?</p> <p>22 A. I didn't see it. I -- I -- he wasn't close  23 enough for -- for me to see it.</p> <p>24 Q. Did you take a picture of him?</p> <p>25 A. No, I did not.</p>	<p style="text-align: right;">380</p> <p>1 Q. Okay.</p> <p>2 A. Buddy Duval was --</p> <p>3 Q. What did he say about Buddy?</p> <p>4 A. He was actually was saying that Buddy Duval  5 and he hung out together, and he was mentioning his  6 name as if he thought possibly I would know Buddy  7 Duval. But I -- I didn't. And I mentioned the name  8 just so that it would provide context for Mr. Cicero  9 to investigate further if there was, in fact, a Buddy  10 Duval there.</p> <p>11 After I was on paid leave, ironically,  12 Smith &amp; Wesson hired Buddy Duval.</p> <p>13 Q. How do you know that?</p> <p>14 A. It was in the -- it was in a news release.  15 He was a -- he had some expertise. I think he was  16 the coach of the Olympic -- United States Olympic  17 team in shooting and that Smith &amp; Wesson had hired  18 him. The gentleman he spoke of with Mr. Duval was an  19 older gentleman. So I don't know if that was, in  20 fact, Buddy Duval's father that also worked at Smith  21 &amp; Wesson. I really didn't know. But, at that point,  22 I was on paid leave, and I -- I felt at that time  23 it's interesting, but I felt Mr. Cicero would look  24 into it.</p> <p>25 Q. And did the person who approached you give</p>

Baker, Earl Donald - Vol. II

September 25, 2020

35 (Pages 381 to 384)

<p style="text-align: right;">381</p> <p>1 you his name?</p> <p>2 <b>A. He did. He -- he mentioned his first name,</b></p> <p>3 <b>and for the life of me, my wife and I can't recall</b></p> <p>4 <b>it. I -- I -- we've grilled each other a few times</b></p> <p>5 <b>and we just -- I -- I just don't recall. Some</b></p> <p>6 <b>stranger meets you in a Walmart. I -- I didn't want</b></p> <p>7 <b>to go back and say, What, again, was your name? So I</b></p> <p>8 <b>didn't re-ask him, but at the time, I actually felt</b></p> <p>9 <b>like I remembered going out and I just can't recall</b></p> <p>10 <b>his name. But if he was, in fact, a driver for</b></p> <p>11 <b>Pioneer when Buddy -- when -- when Buck Upson owned</b></p> <p>12 <b>it, I'm sure that they could be -- his name could be</b></p> <p>13 <b>ascertained if Mr. Cicero wanted to find it.</b></p> <p>14 <b>Q. And other than passing along information</b></p> <p>15 <b>about the statements that this person said --</b></p> <p>16 <b>statements that -- that this person made while he was</b></p> <p>17 <b>in the Walmart, did you provide any additional</b></p> <p>18 <b>information to Mr. Cicero about this?</b></p> <p>19 <b>A. No, just --</b></p> <p>20 <b>MR. LEE: Objection -- objection to the</b></p> <p>21 <b>form of the question, but you can answer.</b></p> <p>22 <b>A. Just contextually what I told you.</b></p> <p>23 <b>Q. Um-hmm. And do you know what he did to</b></p> <p>24 <b>look into your concerns?</b></p> <p>25 <b>A. No, I do not.</b></p>	<p style="text-align: right;">383</p> <p>1 I'm -- I'm looking at it right now and the other ones</p> <p>2 matched up.</p> <p>3 <b>A. There is no document between 37 and 38 --</b></p> <p>4 <b>tab 38 in my binder. The tabs exist, but there's no</b></p> <p>5 <b>document in between it.</b></p> <p>6 <b>Q. Okay. So let me just ask a broader</b></p> <p>7 <b>question. There's a -- a sequence of emails from</b></p> <p>8 <b>March 13, 2014 between various HR representatives.</b></p> <p>9 <b>Did you ever hear that a vendor called H &amp; M had</b></p> <p>10 <b>provided TVs to Smith &amp; Wesson managers?</b></p> <p>11 <b>A. No. I had no interaction with H &amp; M at</b></p> <p>12 <b>all. When I saw that document -- I know which</b></p> <p>13 <b>document you're speaking of.</b></p> <p>14 <b>Q. Um-hmm.</b></p> <p>15 <b>A. I have -- had never had interactions with H</b></p> <p>16 <b>&amp; M.</b></p> <p>17 <b>Q. Okay.</b></p> <p>18 <b>A. Whether the -- I do know in the document</b></p> <p>19 <b>the person that was giving the account that he had</b></p> <p>20 <b>returned the TV was reluctant to give the vendor and</b></p> <p>21 <b>she pressed him some to get it. I don't know if</b></p> <p>22 <b>we're talking about the same scenario or whether, in</b></p> <p>23 <b>fact, another vendor had given it. In my mind,</b></p> <p>24 <b>either could be true because I do believe there was a</b></p> <p>25 <b>pay-to-play atmosphere at Smith &amp; Wesson where not</b></p>
<p style="text-align: right;">382</p> <p>1 <b>Q. I'm going to have you look at Exhibit 37.</b></p> <p>2 <b>Do you have that in front of you?</b></p> <p>3 <b>A. There's a problem with my book. When 37 --</b></p> <p>4 <b>I turn that page, there is no document between tab 37</b></p> <p>5 <b>and tab 38.</b></p> <p>6 <b>Q. Look under tab 38 and see if there is a</b></p> <p>7 <b>March 13, 2014 email from Anne Bruce to Kathy</b></p> <p>8 <b>Salvador and Ed Suraci.</b></p> <p>9 <b>A. No, 38 is pretty much the declaration of</b></p> <p>10 <b>Mark Smith. So it doesn't have that email. I'll --</b></p> <p>11 <b>I'll go back one possibly to 36; do you think?</b></p> <p>12 <b>Q. I don't have that statement. So I think</b></p> <p>13 <b>you might be looking at the wrong set. These are the</b></p> <p>14 <b>-- these -- these are the Smith &amp; Wesson exhibits.</b></p> <p>15 <b>A. Yup, Smith &amp; Wesson exhibit. There's --</b></p> <p>16 <b>MR. LEE: Yeah, Earl -- Earl wouldn't have</b></p> <p>17 <b>our exhibits. I didn't send it to him. So the</b></p> <p>18 <b>exhibits he'd have in the binders would be the</b></p> <p>19 <b>ones that you sent to him.</b></p> <p>20 <b>MS. BETRAM: Okay. But I had previously</b></p> <p>21 <b>sent him some of the Plaintiff's exhibits.</b></p> <p>22 <b>MR. LEE: Oh.</b></p> <p>23 <b>MS. BETRAM: Yes.</b></p> <p>24 <b>BY MS. BETRAM:</b></p> <p>25 <b>Q. Are you looking -- looking at 37? Because</b></p>	<p style="text-align: right;">384</p> <p>1 <b>only was that common knowledge among -- or not</b></p> <p>2 <b>knowledge, but rumor throughout the plant that</b></p> <p>3 <b>vendors were giving inappropriate gifts, but that</b></p> <p>4 <b>also while I was on paid leave, Smith &amp; Wesson</b></p> <p>5 <b>basically paid a \$2 million fine to the S -- FCC for</b></p> <p>6 <b>bribing individuals in a foreign country purchasing</b></p> <p>7 <b>firearms for their police force. So I think that it</b></p> <p>8 <b>would be indicative of the pay-to-play atmosphere</b></p> <p>9 <b>they had.</b></p> <p>10 <b>Q. The -- the allegations regarding H &amp; M, you</b></p> <p>11 <b>were not aware of them until you received our</b></p> <p>12 <b>production, correct?</b></p> <p>13 <b>A. That's correct.</b></p> <p>14 <b>Q. And earlier in the deposition you said that</b></p> <p>15 <b>(inaudible) showed that there were gifts (inaudible).</b></p> <p>16 <b>Is that right?</b></p> <p>17 <b>A. Pardon? Could you say that again? You</b></p> <p>18 <b>were garbled.</b></p> <p>19 <b>Q. Earlier in the deposition, you said that</b></p> <p>20 <b>there were -- that our production showed that there</b></p> <p>21 <b>-- there were gifts of TVs.</b></p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q. Is that right?</b></p> <p>24 <b>A. Yes.</b></p> <p>25 <b>Q. And is that -- is -- is that assertion</b></p>



<p style="text-align: right;">385</p> <p>1 based on this exhibit that you saw in production?</p> <p>2 <b>A. Yes. It was based on that.</b></p> <p>3 Q. Okay. Now, during the first day of your</p> <p>4 deposition, we talked about Road Island Carbide and</p> <p>5 (inaudible).</p> <p>6 THE COURT REPORTER: Ms. Bertram, when</p> <p>7 you're speaking that way, it gets garbled. So I</p> <p>8 heard "Rhode Island" and not what you said after</p> <p>9 that.</p> <p>10 MS. BETRAM: Yeah, I'm sorry. I turned</p> <p>11 away from you. I'll -- I'll talk towards the --</p> <p>12 the computer.</p> <p>13 THE COURT REPORTER: Thank you.</p> <p>14 MS. BETRAM: Can you hear me fine now?</p> <p>15 THE COURT REPORTER: Yes.</p> <p>16 MS. BETRAM: Okay.</p> <p>17 BY MS. BETRAM:</p> <p>18 Q. We had been talking about Rhode Island</p> <p>19 Carbide. What did you do, if anything, to</p> <p>20 investigate your concerns about Rhode Island Carbide?</p> <p>21 MR. LEE: Objection to the form of the</p> <p>22 question, but you may answer if you can.</p> <p>23 <b>A. I don't see my role as being an</b></p> <p>24 <b>investigator. So if you speak kind of specifically,</b></p> <p>25 <b>I can tell you what maybe I did. I just don't</b></p>	<p style="text-align: right;">387</p> <p>1 <b>A. That's what I was told by Mr. Dziobek. The</b></p> <p>2 <b>normal process of things was I wrote the requisition.</b></p> <p>3 <b>It was given to Mr. Flatley. He would approve it and</b></p> <p>4 <b>forward it on to Mr. Dziobek for purchase. In this</b></p> <p>5 <b>case, I sent it to him, and it should have already</b></p> <p>6 <b>been at Mr. Dziobek, but instead, I got a</b></p> <p>7 <b>solicitation from Mr. Upson.</b></p> <p>8 Q. And Mr. Upson explained to you that he had</p> <p>9 seen that Rhode Island Carbide was providing a</p> <p>10 particular tool when they were stocking the</p> <p>11 RoboCribs, right?</p> <p>12 <b>A. Yes.</b></p> <p>13 THE COURT REPORTER: They were stocking</p> <p>14 what?</p> <p>15 MS. BETRAM: The Robocrib. It's R-o-b-o,</p> <p>16 dash, C-r-i-b.</p> <p>17 BY MS. BETRAM:</p> <p>18 Q. And do you have any reason to doubt that</p> <p>19 what Mr. Upson said was accurate?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And why is that?</p> <p>22 <b>A. Mr. Upson was saying he saw this tool being</b></p> <p>23 <b>put into the RoboCrib, which is not the function of</b></p> <p>24 <b>the owner. Secondly, if we were purchasing these</b></p> <p>25 <b>tools, how then did he see us putting in tools that</b></p>
<p style="text-align: right;">386</p> <p>1 <b>understand.</b></p> <p>2 Q. Did you do anything to look into your</p> <p>3 concerns about Rhode Island Carbide?</p> <p>4 MR. LEE: Objection -- same objection, but</p> <p>5 you may answer if you can.</p> <p>6 <b>A. I -- I was gathering facts. So I had the</b></p> <p>7 <b>belief that a large order being placed with Rhode</b></p> <p>8 <b>Island Carbide was then given by Mr. Flatley to</b></p> <p>9 <b>Derek Upson or to somebody at Pioneer. In response,</b></p> <p>10 <b>Derek Upson sent me an email soliciting work for a</b></p> <p>11 <b>large purchase order or a requisition that I had</b></p> <p>12 <b>already -- I had just sent to Flatley.</b></p> <p>13 <b>Flatley was the only one that knew about</b></p> <p>14 <b>it. And in the normal course, he would have signed</b></p> <p>15 <b>it and passed it on to Dziobek. Instead, this one,</b></p> <p>16 <b>he held onto, and then I get an email from Mr. Upson,</b></p> <p>17 <b>you know, soliciting to bid for that -- that order.</b></p> <p>18 <b>And so as far as what I did to investigate,</b></p> <p>19 <b>I checked just to find out whether or not Mr. Flatley</b></p> <p>20 <b>had sent that requisition to Andrew Dziobek. He had</b></p> <p>21 <b>not. He had held it for some reason. And I thought</b></p> <p>22 <b>that was suspicious, and I got Mr. Suraci -- Suraci</b></p> <p>23 <b>involved.</b></p> <p>24 Q. And how do you know that Mr. Flatley held</p> <p>25 on to the invoice?</p>	<p style="text-align: right;">388</p> <p>1 <b>I'm just now requisitioning?</b></p> <p>2 <b>So had I just purchased them and he put</b></p> <p>3 <b>them in, it was more plausible than me just</b></p> <p>4 <b>requisitioning some, meaning we didn't have any and</b></p> <p>5 <b>I'm requisitioning some from Rhode Island Carbide to</b></p> <p>6 <b>augment what we currently produced at Smith &amp; Wesson.</b></p> <p>7 <b>So it was my belief that there would have been none</b></p> <p>8 <b>of those tools for him view.</b></p> <p>9 Q. And do you have personal knowledge that</p> <p>10 Mr. Flatley told Mr. Upson that there was a pending</p> <p>11 purchase order for purchasing tools from Rhode Island</p> <p>12 Carbide?</p> <p>13 <b>A. My personal knowledge would be that I know</b></p> <p>14 <b>the system of how it works. My requisitions are seen</b></p> <p>15 <b>by no one other than my boss and Mr. Dziobek. So if</b></p> <p>16 <b>someone else were to have given that information to</b></p> <p>17 <b>Pioneer, it would have to have been myself,</b></p> <p>18 <b>Mr. Flatley, or Mr. Dziobek. I know I hadn't, and I</b></p> <p>19 <b>talked to Andrew and he -- he stated he had not. So</b></p> <p>20 <b>by -- by simple deduction, I'm left with Mr. Flatley.</b></p> <p>21 Q. But you did not overhear Mr. Flatley tell</p> <p>22 Mr. Upson about the order, right?</p> <p>23 <b>A. No, ma'am.</b></p> <p>24 Q. And you didn't see an email where he</p> <p>25 provided information to Mr. Upson regarding the</p>



<p style="text-align: right;">389</p> <p>1 order, correct?</p> <p>2 <b>A. No.</b></p> <p>3 Q. And -- I'll just strike that.</p> <p>4 And you indicated that you passed this</p> <p>5 along to Mr. Cicero, correct?</p> <p>6 <b>A. I passed it along to Mr. Suraci for sure,</b></p> <p>7 <b>and I think Mr. Cicero. In my mind, they were almost</b></p> <p>8 <b>synonymous, that I knew if I gave it to Mr. Suraci,</b></p> <p>9 <b>he would give it to Mr. Cicero and vice versa. Or</b></p> <p>10 <b>I -- I don't know that Cicero shared everything with</b></p> <p>11 <b>Suraci, but I felt like everything I told Mr. Suraci</b></p> <p>12 <b>went to Mr. Cicero. So if I told one and not the</b></p> <p>13 <b>other, I felt like the information would get to the</b></p> <p>14 <b>same source or same place.</b></p> <p>15 Q. And we've already reviewed email</p> <p>16 communications relating to this at our -- during our</p> <p>17 prior deposition. Did you identify the names of any</p> <p>18 witnesses that you thought that Mr. Cicero or</p> <p>19 Mr. Suraci should speak with?</p> <p>20 <b>A. In the course of it, when the -- the -- the</b></p> <p>21 <b>prior quote that -- or the prior price that I had in</b></p> <p>22 <b>hand disappeared and I had to get a copy out of the</b></p> <p>23 <b>other database. I think that would indicate that</b></p> <p>24 <b>they should probably talk to accounts payable and</b></p> <p>25 <b>possibly check with Mr. Cuvitch (phonetic) who is</b></p>	<p style="text-align: right;">391</p> <p>1 Is it your view that Smith &amp; Wesson</p> <p>2 violated Sarbanes-Oxley with respect to the issues</p> <p>3 surrounding Rhode Island Carbide?</p> <p>4 MR. LEE: Objection to the form of the</p> <p>5 question, but you may answer if you can.</p> <p>6 <b>A. I -- I think that it was a transaction that</b></p> <p>7 <b>would cause me to want to look into those claims,</b></p> <p>8 <b>yes, and viewed in totality, yes, it is just one of</b></p> <p>9 <b>many incidences that would seem to point to</b></p> <p>10 <b>violations of SOX. Or -- or basically SOX worthy or</b></p> <p>11 <b>fraudulent -- a claim of fraud on the -- on the</b></p> <p>12 <b>company I worked for. And so my submission of that</b></p> <p>13 <b>and my subsequent release turns it into a SOX claim.</b></p> <p>14 <b>But at the time I gave it, it was -- it was just my</b></p> <p>15 <b>belief that there was fraudulent activity happening</b></p> <p>16 <b>within the plant, and this was one incident.</b></p> <p>17 Q. Now, you said that something turned it into</p> <p>18 a Sarbanes-Oxley violation. I didn't hear what you</p> <p>19 said.</p> <p>20 <b>A. The thing that I believe turned it into</b></p> <p>21 <b>that was when I made the submission that I felt like</b></p> <p>22 <b>was part of a -- a fraud so that they would</b></p> <p>23 <b>investigate. And then when I was subsequently</b></p> <p>24 <b>terminated because of those submissions that I feel</b></p> <p>25 <b>that makes it a SOX -- SOX claim.</b></p>
<p style="text-align: right;">390</p> <p>1 <b>security at the plant to find out who took that paper</b></p> <p>2 <b>from my office.</b></p> <p>3 Q. And we talked about during -- that during</p> <p>4 the first day of your -- of your deposition.</p> <p>5 We talked about some of the inquiry that</p> <p>6 you did about this issue before -- before or around</p> <p>7 the time that you spoke with Mr. Cicero about it or</p> <p>8 Mr. Suraci about it. Did you ever look back at the</p> <p>9 -- the invoices that were in the file that you</p> <p>10 maintained, the old vendor invoice file that you had</p> <p>11 at home?</p> <p>12 <b>A. I -- I had looked through it. If -- if</b></p> <p>13 <b>that's the question, yes.</b></p> <p>14 Q. And did you identify the price that Pioneer</p> <p>15 Tool had charged for this tool, the tool in question?</p> <p>16 <b>A. In that list, no.</b></p> <p>17 Q. Did you -- did you look for it in</p> <p>18 connection with this particular issue?</p> <p>19 <b>A. No.</b></p> <p>20 Q. I take it from your prior testimony, you</p> <p>21 don't know what Mr. Suraci or Mr. Cicero did to look</p> <p>22 into your concerns about Rhode Island Carbide?</p> <p>23 <b>A. No.</b></p> <p>24 Q. And do you consider this concern -- let me</p> <p>25 -- let me back up.</p>	<p style="text-align: right;">392</p> <p>1 Q. And I understand that your position is that</p> <p>2 you believe (inaudible) --</p> <p>3 THE COURT REPORTER: All right. It's --</p> <p>4 you're garbled.</p> <p>5 MS. BETRAM: Let me start over.</p> <p>6 THE COURT REPORTER: Yeah, if you're just a</p> <p>7 little louder, I think it comes out clear.</p> <p>8 BY MS. BETRAM:</p> <p>9 Q. I understand, Mr. Baker, that you believe</p> <p>10 that your termination violated section 806 of</p> <p>11 Sarbanes-Oxley.</p> <p>12 <b>A. Yes.</b></p> <p>13 MR. LEE: Objection. Objection to --</p> <p>14 BY MS. BETRAM:</p> <p>15 Q. But --</p> <p>16 MR. LEE: Objection to the form of the</p> <p>17 question, but he can answer if he can. Obviously</p> <p>18 he's not a lawyer and he's not required to know</p> <p>19 all that stuff, but if you can answer it, you can</p> <p>20 try to answer it.</p> <p>21 THE DEPONENT: Yes. Based on my limited</p> <p>22 knowledge of -- and what I surmised from the</p> <p>23 training I got at Smith &amp; Wesson (inaudible). I</p> <p>24 -- I --</p> <p>25 THE COURT REPORTER: Say that again.</p>

Baker, Earl Donald - Vol. II

September 25, 2020

38 (Pages 393 to 396)

<p style="text-align: right;">393</p> <p>1 THE DEPONENT: -- I believe that.</p> <p>2 THE COURT REPORTER: Sorry. Based on the</p> <p>3 training I got ...</p> <p>4 THE DEPONENT: At Smith &amp; Wesson, I was</p> <p>5 required to take LRN training. But based on</p> <p>6 that, my belief is that it is a violation of 806</p> <p>7 in SOX, but --</p> <p>8 BY MS. BETRAM:</p> <p>9 Q. Okay.</p> <p>10 <b>A. -- that's just based on that.</b></p> <p>11 Q. Let's put 806 to the side. Is it your</p> <p>12 position that your allegations relating to Rhode</p> <p>13 Island Carbide were a substantive violation of</p> <p>14 Sarbanes-Oxley, for instance, wire or mail fraud?</p> <p>15 MR. LEE: Objection to the form of the</p> <p>16 question. He doesn't even know what that is.</p> <p>17 Like I said, you -- he could -- he could try to</p> <p>18 answer whatever he thinks is -- his understanding</p> <p>19 of SOX is or 806 is, but he's not required to</p> <p>20 know that stuff. The case law is pretty clear on</p> <p>21 that. But if you could try to answer it, you</p> <p>22 could try to answer it.</p> <p>23 MS. BETRAM: Objection to the coaching.</p> <p>24 MR. LEE: It's not coaching.</p> <p>25 BY MS. BETRAM:</p>	<p style="text-align: right;">395</p> <p>1 <b>a very likable fellow, and I can picture him, but I</b></p> <p>2 <b>can't recall his name.</b></p> <p>3 Q. So he was someone who reported to</p> <p>4 Mr. Francis; is that right?</p> <p>5 <b>A. Yes. Yes.</b></p> <p>6 Q. Okay. And you just can't remember his</p> <p>7 name?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And did Mr. Francis indicate that he had</p> <p>10 reported this concern to anybody at Smith &amp; Wesson?</p> <p>11 <b>A. At the time he mentioned it to me, he said</b></p> <p>12 <b>that he had done some investigation on his own and</b></p> <p>13 <b>confirmed that he had sourced the box at 99 cents</b></p> <p>14 <b>apiece and that they were charging \$9.90 is what he</b></p> <p>15 <b>told me.</b></p> <p>16 Q. And when you say he had sourced, are you</p> <p>17 talking about Mr. Francis had sourced the box?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay. And -- and after he provided this</p> <p>20 information to you about the box cost, did you then</p> <p>21 tell Mr. Suraci or Mr. Cicero or anybody else at</p> <p>22 Smith &amp; Wesson about this concern?</p> <p>23 <b>A. I don't -- I don't have any specific</b></p> <p>24 <b>recollection that I did. I can't say for certain,</b></p> <p>25 <b>but the timing of it -- all I can tell is my</b></p>
<p style="text-align: right;">394</p> <p>1 Q. Mr. -- Mr. Baker, do you know what wire</p> <p>2 fraud is?</p> <p>3 <b>A. I -- I know what the term implies.</b></p> <p>4 Q. Do you know what mail fraud is?</p> <p>5 <b>A. Yes. Yes.</b></p> <p>6 Q. And is it your position that -- actually,</p> <p>7 let me take -- just take a second. Actually, let's</p> <p>8 make -- let me strike that.</p> <p>9 Now, you mentioned boxes that cost 10 times</p> <p>10 as much as they should have. When did you become</p> <p>11 aware of that concern?</p> <p>12 <b>A. Mr. Francis asked to meet me at a</b></p> <p>13 <b>restaurant. He wanted to meet offsite for lunch. So</b></p> <p>14 <b>we met at a restaurant, and he said someone that was</b></p> <p>15 <b>a -- that had prior -- previously worked for him was</b></p> <p>16 <b>now moved up to a more prominent position and came to</b></p> <p>17 <b>him with concerns over sourcing of boxes that he felt</b></p> <p>18 <b>was incorrect. So it was during summer of -- or late</b></p> <p>19 <b>spring/early summer of 2014.</b></p> <p>20 Q. And when did you speak with Mr. Francis?</p> <p>21 <b>A. At that meeting in late September of 2014.</b></p> <p>22 Q. And who was Mr. Francis's source for his</p> <p>23 concerns about the box costs?</p> <p>24 <b>A. There were 1,500 people who worked at Smith</b></p> <p>25 <b>&amp; Wesson. I knew the guy's name who worked for him,</b></p>	<p style="text-align: right;">396</p> <p>1 <b>inclination was that this was somewhat more of a</b></p> <p>2 <b>hearsay thing from Mr. Francis even though he was a</b></p> <p>3 <b>vice president and believed he -- he was very capable</b></p> <p>4 <b>of pursuing it on his own.</b></p> <p>5 <b>So I -- I -- my inclination is that I might</b></p> <p>6 <b>not have, but it's possible I did.</b></p> <p>7 Q. Okay. Now, are you aware of a report</p> <p>8 prepared by Alvarez &amp; Marsal relating to tooling</p> <p>9 costs?</p> <p>10 <b>A. Only after -- the first time I heard of</b></p> <p>11 <b>them was in Mr. Cicero's investigation report</b></p> <p>12 <b>analysis.</b></p> <p>13 Q. And have you ever reviewed the report?</p> <p>14 <b>A. No. I've -- I've heard it referred to.</b></p> <p>15 Q. Pardon me?</p> <p>16 <b>A. No. I -- I -- in the documents, they refer</b></p> <p>17 <b>to it, and that's my only knowledge of -- of them.</b></p> <p>18 <b>Well, other than research.</b></p> <p>19 Q. And what do you mean by research?</p> <p>20 <b>A. I know that that's -- that's a company that</b></p> <p>21 <b>Mr. Smith worked for prior to coming to Smith &amp;</b></p> <p>22 <b>Wesson.</b></p> <p>23 Q. Right. But while you were at Smith &amp;</p> <p>24 Wesson, did you ever hear that an outside company had</p> <p>25 made recommendations for tooling costs at Smith &amp;</p>

Baker, Earl Donald - Vol. II

September 25, 2020

39 (Pages 397 to 400)

<p style="text-align: right;">397</p> <p>1 Wesson?</p> <p>2 <b>A. I had not heard the name when I was on the</b></p> <p>3 <b>floor, but I received the investigation report while</b></p> <p>4 <b>I still worked for Smith &amp; Wesson.</b></p> <p>5 Q. Okay. So that was the first that you</p> <p>6 learned that such an evaluation had been done by a</p> <p>7 their party?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. When did you first learn that Smith &amp;</p> <p>10 Wesson had a letter of intent with Pioneer?</p> <p>11 <b>A. I knew at sometime through the -- through</b></p> <p>12 <b>the employment. I can't tell you specifics of when,</b></p> <p>13 <b>but that there was a somewhat agreement between</b></p> <p>14 <b>vendors. And it may have been told to me from a</b></p> <p>15 <b>vendor. But it -- I was aware that there was a</b></p> <p>16 <b>specific document that delineated who would stock the</b></p> <p>17 <b>crib and who would get paid for stocking the crib.</b></p> <p>18 <b>And even that -- well, that -- that's -- that answers</b></p> <p>19 <b>your question.</b></p> <p>20 Q. And was it your understanding that MSC had</p> <p>21 a letter agreement with Smith &amp; Wesson as well?</p> <p>22 <b>A. Yes, all vendors.</b></p> <p>23 Q. Okay. And did you ever review any of the</p> <p>24 letters of intent?</p> <p>25 MR. LEE: Objection to the form of the</p>	<p style="text-align: right;">399</p> <p>1 THE DEPONENT: Okay.</p> <p>2 MR. LEE: -- if the documents are there.</p> <p>3 If they're there, open them up obviously, you</p> <p>4 know, that --</p> <p>5 THE DEPONENT: Okay.</p> <p>6 MR. LEE: All right?</p> <p>7 MS. BETRAM: That sounds like a good plan.</p> <p>8 THE DEPONENT: All right. Thank you.</p> <p>9 MS. BETRAM: Okay. Thank you.</p> <p>10 THE VIDEOGRAPHER: Going off the record --</p> <p>11 going off the record at 2:15 P.M.</p> <p>12 (A break was had.)</p> <p>13 THE VIDEOGRAPHER: Back on the record at</p> <p>14 2:29 P.M.</p> <p>15 BY MS. BETRAM:</p> <p>16 Q. So, Mr. Baker, you talked about attending</p> <p>17 the LRN training regarding ethics. You knew when you</p> <p>18 were employed by Smith &amp; Wesson that they had a</p> <p>19 24-hour anonymous ethics line, correct?</p> <p>20 <b>A. Yes, our -- our reporting line, yes.</b></p> <p>21 Q. And did you ever make a report on that</p> <p>22 anonymous hotline?</p> <p>23 <b>A. That was something I -- I discussed with</b></p> <p>24 <b>Mr. Cicero that he told me our conversation would be</b></p> <p>25 <b>confidential, and I was taken to Mr. Cicero by</b></p>
<p style="text-align: right;">398</p> <p>1 question --</p> <p>2 <b>A. Not --</b></p> <p>3 MR. LEE: Objection to the form of the</p> <p>4 question as to when, but --</p> <p>5 <b>A. Yes.</b></p> <p>6 MR. LEE: -- you can answer.</p> <p>7 <b>A. Yes. Not during the time I -- I worked</b></p> <p>8 <b>there, but in discovery, I have.</b></p> <p>9 Q. Okay. So you did not review any of the</p> <p>10 letters of intent while you were employed by the</p> <p>11 company?</p> <p>12 <b>A. No.</b></p> <p>13 Q. And did you ever request a copy of it or a</p> <p>14 copy of any of them?</p> <p>15 <b>A. No. That's kind of a legal agreement and</b></p> <p>16 <b>kind of out of my realm of expertise.</b></p> <p>17 MS. BETRAM: Why don't we take a break. I</p> <p>18 have at this point about an hour and a half.</p> <p>19 Mr. Baker, I had sent to your home some</p> <p>20 additional exhibits and I wanted to see if they'd</p> <p>21 arrived at your home.</p> <p>22 THE DEPONENT: I'm sitting about 20 feet</p> <p>23 from the door. Let me ask my wife.</p> <p>24 MR. LEE: Take a quick break -- take a</p> <p>25 quick break. Go check to see --</p>	<p style="text-align: right;">400</p> <p>1 <b>Mr. Suraci. He was the one that said he would like</b></p> <p>2 <b>to escalate it because he thought it was possibly</b></p> <p>3 <b>serious and wanted to know if it was okay to involve</b></p> <p>4 <b>Mr. Cicero. So that was the genesis of going there.</b></p> <p>5 <b>But I had thought about the line, but, as I</b></p> <p>6 <b>told Mr. Cicero, I didn't want to do anything that</b></p> <p>7 <b>would harm Smith &amp; Wesson, as what I believed my</b></p> <p>8 <b>brother-in-law suggested, going to the FBI, I thought</b></p> <p>9 <b>that that would be harmful to Smith &amp; Wesson, and I</b></p> <p>10 <b>wanted what was in their best interest.</b></p> <p>11 Q. And do you know whether anybody ended up</p> <p>12 going to the FBI to raise concerns about Smith &amp;</p> <p>13 Wesson?</p> <p>14 <b>A. I know that in some of the texts which</b></p> <p>15 <b>you've been presented, Mr. O'Brien has mentioned the</b></p> <p>16 <b>FBI or mentioned that he was going to do so. But I</b></p> <p>17 <b>never inquired whether he actually had or whether it</b></p> <p>18 <b>was just something he said.</b></p> <p>19 Q. And did he tell you what he was going --</p> <p>20 what he planned to go to the FBI to complain about?</p> <p>21 <b>A. No, he did not.</b></p> <p>22 Q. Did you ever report your concerns about</p> <p>23 Smith &amp; Wesson to the SEC?</p> <p>24 <b>A. No, I did not.</b></p> <p>25 Q. And did you ever report them to any other</p>

Baker, Earl Donald - Vol. II

September 25, 2020

40 (Pages 401 to 404)

<p style="text-align: right;">401</p> <p>1 governmental entity other than OSHA?</p> <p>2 <b>A. No, I did not.</b></p> <p>3 Q. So you said that the package arrived from</p> <p>4 FedEx. And in it are a couple different categories</p> <p>5 of documents. If you could pull out -- there's a new</p> <p>6 set of text messages. Basically, it's just a</p> <p>7 consolidation of what had been Exhibit A and Exhibit</p> <p>8 B in the prior materials that I sent to you. And</p> <p>9 what we did is we combined them into a single set of</p> <p>10 text messages that we're going to call Exhibit 4B.</p> <p>11 <b>A. Okay. I have that.</b></p> <p>12 Q. Do you have that document in front of you?</p> <p>13 <b>A. Yes.</b></p> <p>14 MR. LEE: So which one is this?</p> <p>15 MS. BETRAM: So it's -- it's still marked,</p> <p>16 John, as Exhibit 4.</p> <p>17 MR. LEE: Okay.</p> <p>18 MS. BETRAM: It was in a zip file that</p> <p>19 Missy sent over. It should be something like</p> <p>20 Consolidated Set of Text Messages.</p> <p>21 MR. LEE: Yeah, I -- I have them. I just</p> <p>22 -- just -- let's just make sure that we -- is</p> <p>23 this already -- I -- it's marked as Exhibit 4, at</p> <p>24 least the version I have right in the upper</p> <p>25 right-hand corner.</p>	<p style="text-align: right;">403</p> <p>1 Actually --</p> <p>2 MS. BETRAM: That may not have gotten --</p> <p>3 MR. LEE: -- as far as the record is</p> <p>4 concerned, it doesn't exist until now, right?</p> <p>5 MS. BETRAM: Well, let's just make this 4B</p> <p>6 just because --</p> <p>7 MR. LEE: Okay.</p> <p>8 MS. BETRAM: -- it's easier for me to</p> <p>9 recall because it's the third consol -- it's the</p> <p>10 third set and it's the consolidated set.</p> <p>11 MR. LEE: Okay.</p> <p>12 (Exhibit 4B marked for identification)</p> <p>13 BY MS. BETRAM:</p> <p>14 Q. Did you find that, Mr. Baker?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And I'm just going to ask you a couple of</p> <p>17 questions quickly about some of the text messages</p> <p>18 that are in here.</p> <p>19 If you look at line 16, there is a text</p> <p>20 from you to Jan. It says, Meeting with Kathy in 15</p> <p>21 minutes.</p> <p>22 That's the conversation we already</p> <p>23 discussed about October 3rd, 2013, correct?</p> <p>24 <b>A. Yes. Now, when we say we discussed, we</b></p> <p>25 <b>discussed making submissions. There were submissions</b></p>
<p style="text-align: right;">402</p> <p>1 MS. BETRAM: It should be Exhibit 4B.</p> <p>2 We'll correct it and send it over to the court</p> <p>3 reporter.</p> <p>4 THE DEPONENT: Should I -- Connie, it</p> <p>5 doesn't say 4B. Should I write 4B on this?</p> <p>6 MS. BETRAM: It doesn't matter because your</p> <p>7 set is not going to go to the court reporter.</p> <p>8 It's a (inaudible) set.</p> <p>9 MR. LEE: So there is already a 4, and</p> <p>10 you're saying 4B is -- 4B includes 4; it's just a</p> <p>11 more consolidated better, more legible copy.</p> <p>12 MS. BETRAM: Yeah, we never ended up using</p> <p>13 it. There was also a --</p> <p>14 MR. LEE: Okay.</p> <p>15 MS. BETRAM: -- 4A.</p> <p>16 MR. LEE: Oh.</p> <p>17 MS. BETRAM: And it was just a</p> <p>18 miscommunication between Missy and me. I had</p> <p>19 asked her to combine 4 and 4A and she just gave</p> <p>20 you -- there were two sets and I asked -- I had</p> <p>21 them merged. And that's 4 --</p> <p>22 MR. LEE: Well, it wasn't even marked</p> <p>23 before then. So actually --</p> <p>24 MS. BETRAM: Oh --</p> <p>25 MR. LEE: -- as far as the -- yeah.</p>	<p style="text-align: right;">404</p> <p>1 <b>prior to this, but this would have been one of the</b></p> <p>2 <b>meetings that -- with her --</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. -- yes.</b></p> <p>5 Q. Okay. The pause is just me scrolling</p> <p>6 through the document because I have an electronic</p> <p>7 version and I marked the ones -- go to entries 82 and</p> <p>8 83. There's communications between you and your wife</p> <p>9 about a safety audit and who was there during the</p> <p>10 pitch board.</p> <p>11 Did you ever record any of your</p> <p>12 conversations with Mr. Flatley?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Did you ever record your conversations with</p> <p>15 anybody at Smith &amp; Wesson?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Go to 140. That's 1-4-0. I don't think I</p> <p>18 was clear. Did you find it?</p> <p>19 <b>A. It's taking -- I have big fingers. It's</b></p> <p>20 <b>sometimes hard to get the pages. I'm there now.</b></p> <p>21 Q. Okay.</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. It's a text message from your wife to a</p> <p>24 group of folks. And it says, One of Dad's files, he</p> <p>25 calls it his Larry file, had all of its contents</p>

<p style="text-align: right;">405</p> <p>1 still intact in the briefcase except for one of the</p> <p>2 papers that was left out on Dad's desk.</p> <p>3 Do you know what file she's referring to?</p> <p>4 MR. LEE: Objection to the form of the</p> <p>5 question. It calls for speculation, but if you</p> <p>6 can answer it, you can answer it.</p> <p>7 <b>A. I had been documenting some of the</b></p> <p>8 <b>things -- the interactions between me and Larry that</b></p> <p>9 <b>made me believe he was possibly being influenced by a</b></p> <p>10 <b>vendor. I had that in a file. But then when my</b></p> <p>11 <b>office was broken into, that file was taken from my</b></p> <p>12 <b>briefcase and gone, but one of the papers that was in</b></p> <p>13 <b>that file was left on my desk.</b></p> <p>14 Q. So the -- the Larry file was one of the</p> <p>15 things that was removed when someone came in your</p> <p>16 office; is that right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. Go to line 190.</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. In the third sentence, it says, Earl did go</p> <p>21 all -- all to HR back in August, but the woman didn't</p> <p>22 file any paperwork.</p> <p>23 Do you know what woman Ms. Baker is</p> <p>24 referring to?</p> <p>25 MR. LEE: Objection. Hold on. Line 1 --</p>	<p style="text-align: right;">407</p> <p>1 <b>A. Let's see. My -- I -- I could only</b></p> <p>2 <b>speculate that. I don't really know.</b></p> <p>3 MR. LEE: Objection to the form. Earl, her</p> <p>4 question is separate. You're still on the last</p> <p>5 question.</p> <p>6 THE DEPONENT: Okay.</p> <p>7 MR. LEE: Can you read the last question</p> <p>8 back, Eileen?</p> <p>9 (Whereupon, the question was read back by</p> <p>10 the reporter.)</p> <p>11 THE DEPONENT: No, they never told me that.</p> <p>12 BY MS. BETRAM:</p> <p>13 Q. And did Ann Glica or Kathy Salvador ever</p> <p>14 tell you that they thought that you were just going</p> <p>15 into their offices to vent?</p> <p>16 <b>A. No, they never said that to me.</b></p> <p>17 Q. Look at line 206 or entry 206.</p> <p>18 <b>A. Yes. Okay. I have it.</b></p> <p>19 Q. Hold on a second. The music just came on</p> <p>20 really loud in the other room. Okay. Never mind.</p> <p>21 Do you see entry 206?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And you're talking about a guy from</p> <p>24 Balzers. Do you recall who you're referring to</p> <p>25 there?</p>
<p style="text-align: right;">406</p> <p>1 did you just read from line 190, Connie?</p> <p>2 MS. BETRAM: I was reading from the third</p> <p>3 sentence in the entry in 190.</p> <p>4 MR. LEE: So this is May 15, 2014?</p> <p>5 MS. BETRAM: Yes.</p> <p>6 MR. LEE: Okay. It begins, it's been a</p> <p>7 real eye opener?</p> <p>8 MS. BETRAM: Yes.</p> <p>9 MR. LEE: Okay. Okay. I was looking at</p> <p>10 the one below that. I thought the one below that</p> <p>11 was 190. Okay. Go ahead. What was the -- I'm</p> <p>12 sorry. Go ahead now. I got -- I'm at the right</p> <p>13 place.</p> <p>14 BY MS. BETRAM:</p> <p>15 Q. In the third sentence, do you know who she</p> <p>16 is referring to by "the woman didn't file any</p> <p>17 paperwork"?</p> <p>18 MR. LEE: Objection to the form of the</p> <p>19 question. Calls for speculation, but if you can</p> <p>20 answer it, please do.</p> <p>21 <b>A. In the context of this, I -- right now, I'm</b></p> <p>22 <b>unsure of who she's talking about.</b></p> <p>23 Q. Did Kathy Salvador and Ann Glica ever tell</p> <p>24 you that they didn't file any paperwork relating to</p> <p>25 your concerns that you raised in 2013?</p>	<p style="text-align: right;">408</p> <p>1 <b>A. Yes. I'm trying to remember his name. But,</b></p> <p>2 <b>yeah, I know who the person is. His name is escaping</b></p> <p>3 <b>me, but he's a friend on -- on -- he's an associate</b></p> <p>4 <b>on LinkedIn with me.</b></p> <p>5 Q. And Balzers was a vendor of Smith &amp; Wesson</p> <p>6 while you worked there, right?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And was he your contact at Smith &amp; Wesson?</p> <p>9 <b>A. He came in to consult on -- and give a</b></p> <p>10 <b>seminar on how we might be able to improve tool</b></p> <p>11 <b>longevity at Smith &amp; Wesson.</b></p> <p>12 Q. Is that how you met him?</p> <p>13 <b>A. I don't know who first told me about him,</b></p> <p>14 <b>whether it was just a cold call on his part, but we</b></p> <p>15 <b>could -- we needed the information he had. It</b></p> <p>16 <b>would -- it would help our engineers to know -- our</b></p> <p>17 <b>technology as far as coating, we were using a coating</b></p> <p>18 <b>that was good back in the '80s, and it wasn't the</b></p> <p>19 <b>most current or -- so there would be advancements</b></p> <p>20 <b>that would have occurred in that field that if we</b></p> <p>21 <b>employed would save us money. So he came into the</b></p> <p>22 <b>seminar for us.</b></p> <p>23 Q. And when did that seminar take place?</p> <p>24 <b>A. I -- I couldn't tell you the time. My</b></p> <p>25 <b>guess would be either late 2013 or early 2014.</b></p>



<p style="text-align: right;">409</p> <p>1 Q. And did you reach out to him to assist you 2 in looking for a job in -- in May of 2014?</p> <p>3 A. It -- it's possible. I don't deny that. 4 You know, throughout my career, if I felt like, you 5 know, it might be good to look for other employment, 6 I -- I looked at other opportunities that might be 7 there. But to your question was he a vendor of Smith 8 &amp; Wesson, we did our coating through two other 9 suppliers, not Balzers.</p> <p>10 Q. So is it fair to say that by May 29th, 11 2014, that you were actively looking for other 12 employment?</p> <p>13 MR. LEE: Objection to the form of the 14 question. Misstates the witness's prior 15 testimony, but you may answer.</p> <p>16 A. When you say I was actively looking, I 17 don't know if I would characterize it that way. But 18 had I looked at other opportunities throughout my 19 time with Smith &amp; Wesson, the answer is yes, I did.</p> <p>20 Q. And when did you start looking for other 21 opportunities while you were employed at Smith &amp; 22 Wesson?</p> <p>23 A. I really couldn't put a time frame on it. 24 I mean, it's -- it's something that a lot of times 25 with the way that emails are today, I still get</p>	<p style="text-align: right;">411</p> <p>1 at Smith &amp; Wesson.</p> <p>2 Now, when I was on paid leave and -- and I 3 was sitting there, I -- I may have looked at the 4 computer more than I did when I was currently at a 5 job all day.</p> <p>6 Q. But it's true you made applications for 7 employment while you were still employed by Smith &amp; 8 Wesson before you went on administrative leave, 9 right?</p> <p>10 A. I can think of one, yes.</p> <p>11 Q. And that was MSC, right?</p> <p>12 A. No.</p> <p>13 Q. What -- what was the one that you recall?</p> <p>14 A. There was an opportunity in Florida at 15 Piper, the -- they make Piper small aircraft. They 16 -- I was aware of that opportunity, and I believe I 17 sent my resume there.</p> <p>18 Q. And when was that?</p> <p>19 A. Yeah, I -- I really wouldn't know a time 20 frame.</p> <p>21 Q. And --</p> <p>22 A. I think I even -- I think I even mentioned 23 it to Mr. Suraci. So I -- I -- so it would --</p> <p>24 MR. LEE: Mr. who?</p> <p>25 A. -- have had to have been in 2014.</p>
<p style="text-align: right;">410</p> <p>1 recruiters from Florida. I didn't live in -- I 2 haven't lived in Florida for five years, but I still 3 get job opportunities that would pop up on my phone. 4 So do I look at them, yes, and if it's -- if it's 5 something I feel fits my, you know, fits my skill 6 set, it might be something I look at. It doesn't 7 mean that I'm, you know, disloyal or looking to move. 8 It just means that, you know, I was approached with 9 an opportunity and I looked at it.</p> <p>10 Q. And you were looking for other 11 opportunities while you were at Smith &amp; Wesson in 12 2013, right?</p> <p>13 A. No. There is a difference between looking 14 for opportunities and looking at other opportunities. 15 I looked at other opportunities, but I -- I wasn't 16 actively seeking jobs. If you -- and in my mind, if 17 I put my name out on LinkedIn as looking for work or 18 -- that's where I'm actively seeking. But I haven't 19 put anything out there.</p> <p>20 But there might be recruiters that knew I 21 had, you know, put a resume in some place that they 22 have gotten wind of and they may contact me and send 23 job opportunities. That's them soliciting me. But 24 me putting my name on job markets, I know that I -- I 25 don't -- I just don't believe I did that when I was</p>	<p style="text-align: right;">412</p> <p>1 MR. LEE: Sorry -- sorry, Earl. You -- 2 your answer got garbled. I don't know if 3 Eileen got it, but you said you mentioned it 4 to Mr. somebody. What was the name again?</p> <p>5 THE DEPONENT: Suraci.</p> <p>6 MR. LEE: Oh, okay.</p> <p>7 THE DEPONENT: But -- so I didn't meet him 8 in two thousand -- until 2014. So it would have 9 had to have been sometime in 2014.</p> <p>10 BY MS. BETRAM:</p> <p>11 Q. And you also interviewed for positions 12 while you were still employed by Smith &amp; Wesson 13 before you went on administrative leave, right?</p> <p>14 A. In -- not that I can recall.</p> <p>15 Q. And at some point, you started talking with 16 MSC about employment, right?</p> <p>17 A. After I was placed on leave or terminated, 18 one of the two, I did -- yeah, I would -- I would say 19 I was on administrative leave when I talked to them.</p> <p>20 Q. I'm scrolling. Go to entry 251. Do you 21 see that entry?</p> <p>22 A. Yes. I'm -- I'm reading it. Sorry.</p> <p>23 Q. Okay. Let me know when you're done.</p> <p>24 A. Okay.</p> <p>25 Q. And that's a June 14, 2014 email from you</p>



<p style="text-align: right;">413</p> <p>1 to Mr. O'Brien, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And you said, We then argued about how to</p> <p>4 collect the information.</p> <p>5 Who was arguing?</p> <p>6 <b>A. It would have been Steve Wasielewski and</b></p> <p>7 <b>myself. We had a group. As part of our ongoing cost</b></p> <p>8 <b>savings ideas, Ron O'Brien had an idea to save us in</b></p> <p>9 <b>our estimation what would have amounted to a \$10</b></p> <p>10 <b>million per year savings. And we were fleshing out</b></p> <p>11 <b>how to implement that in Steve's department first.</b></p> <p>12 <b>After having run the idea by Mr. -- I believe</b></p> <p>13 <b>Mr. Fontaine and Mr. Flatley, we thought -- he put</b></p> <p>14 <b>together a group containing Mr. Wasielewski and</b></p> <p>15 <b>thought it would be good to try to implement it in</b></p> <p>16 <b>his department.</b></p> <p>17 <b>So this was just fleshing out the details</b></p> <p>18 <b>of how we try to implement Ron's idea.</b></p> <p>19 Q. Okay. And what was Ron's idea?</p> <p>20 <b>A. The -- in looking at the mainframe that</b></p> <p>21 <b>records tool life, it -- the machines actually will</b></p> <p>22 <b>tell you when to change inserts. So ideally the</b></p> <p>23 <b>interim set them to set an alarm at a hundred percent</b></p> <p>24 <b>used to tell you to change the insert.</b></p> <p>25 <b>Because no one was monitoring this, Ron did</b></p>	<p style="text-align: right;">415</p> <p>1 <b>the idea to management and they said yes, go for it.</b></p> <p>2 Q. And were you doing what's called a Kaizen?</p> <p>3 <b>A. It could be a -- considered a Kaizen, but</b></p> <p>4 <b>in this particular case, we -- we had not deduced any</b></p> <p>5 <b>savings yet. So down the road, there may have been a</b></p> <p>6 <b>-- a Kaizen event around this, but at this point, we</b></p> <p>7 <b>were just going through normal channels to propagate</b></p> <p>8 <b>an idea that might save us a lot.</b></p> <p>9 Q. So go to entries 263, 264, and 265.</p> <p>10 <b>A. All right. I'm there. I'm just reading.</b></p> <p>11 Q. Yeah. Just read through those three</p> <p>12 entries. They're all related to each other.</p> <p>13 <b>A. Okay. I've read them.</b></p> <p>14 Q. And those are text communications from you</p> <p>15 to Chet Lewis at Balzers, right?</p> <p>16 <b>A. Yes, that -- that is the individual that</b></p> <p>17 <b>we -- we spoke about earlier, Chet Lewis.</b></p> <p>18 Q. And they were --</p> <p>19 <b>A. I couldn't remember his name.</b></p> <p>20 Q. And they were all sent on June 19 of 2024</p> <p>21 [sic]?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And you were inquiring about employment</p> <p>24 with Balzers, correct?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">414</p> <p>1 <b>a study and found that the average number -- or the</b></p> <p>2 <b>average percentage used at the time they changed the</b></p> <p>3 <b>insert was 25 percent or somewhere around 20 percent,</b></p> <p>4 <b>which meant that the employees would have less</b></p> <p>5 <b>distractions during their workday if it had fresh</b></p> <p>6 <b>tools in it.</b></p> <p>7 <b>So they would come in and change the tools</b></p> <p>8 <b>as soon as they came in even though they'd only used</b></p> <p>9 <b>20 percent of the life of that tool, which was</b></p> <p>10 <b>meaning that we were wasting 70-some percent of the</b></p> <p>11 <b>useful tool life.</b></p> <p>12 <b>So he determined that if we would only</b></p> <p>13 <b>change the tools when we -- they were in the</b></p> <p>14 <b>90-percent range plant-wide, extrapolating that by</b></p> <p>15 <b>the -- the amount we spent on tools, it would amount</b></p> <p>16 <b>to a \$10 million a year savings. That was his idea.</b></p> <p>17 Q. And other than you and Mr. Wasielewski and</p> <p>18 Mr. O'Brien, was anybody else working on this</p> <p>19 project?</p> <p>20 <b>A. There were other members of that panel,</b></p> <p>21 <b>some of which I had never met before. I believe they</b></p> <p>22 <b>worked for Mr. Wasielewski, but I don't -- I don't</b></p> <p>23 <b>recall their names.</b></p> <p>24 Q. And who was the team reporting to?</p> <p>25 <b>A. I was the lead on that because I brought</b></p>	<p style="text-align: right;">416</p> <p>1 Q. And in the third one, you state, I will</p> <p>2 think through who might be a good person to advocate.</p> <p>3 Smith does 20,000 a year in -- 20,000 in coating a</p> <p>4 year. Is that right?</p> <p>5 <b>A. Yes. That was relative to coating, yes.</b></p> <p>6 Q. And Mr. Lewis had asked you who might be</p> <p>7 able to help Balzers get some of the coating work,</p> <p>8 right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. Did you identify a person who might</p> <p>11 be an advocate?</p> <p>12 <b>A. No. And the reason, this is just prior to</b></p> <p>13 <b>me going on paid leave. So I stand corrected on my</b></p> <p>14 <b>-- my recollections. But I went on paid leave within</b></p> <p>15 <b>days, I think, of this. Or I don't know even know.</b></p> <p>16 <b>This may have actually been on paid leave. I don't</b></p> <p>17 <b>know.</b></p> <p>18 <b>Anyhow, if I'm talking to him about this</b></p> <p>19 <b>job, I was the guy who -- who set out the coating.</b></p> <p>20 <b>But if I'm talking to him about a job, it might not</b></p> <p>21 <b>be -- I might not be the best source to advocate for</b></p> <p>22 <b>him to be a vendor. So I was just going to -- I put</b></p> <p>23 <b>him off until I found a source that I felt could be</b></p> <p>24 <b>objective in making the best decision for Smith &amp;</b></p> <p>25 <b>Wesson. So I just felt ethically I'm not going to</b></p>

<p style="text-align: right;">417</p> <p>1 advocate for him, but I'll look for somebody that</p> <p>2 might.</p> <p>3 Q. Go on to the entries 276 through 280.</p> <p>4 A. Okay.</p> <p>5 Q. And those are email communications -- I'm</p> <p>6 sorry, text communications between you and Ms. Baker</p> <p>7 and then you and Mr. Goode at MSC, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And they're dated June 23rd, 2014?</p> <p>10 A. Yes.</p> <p>11 Q. And at that point, you and Ms. Baker were</p> <p>12 looking at positions for you at MSC, right?</p> <p>13 A. No, there's a difference. Ms. --</p> <p>14 Mrs. Baker, my wife, found a job at -- that was being</p> <p>15 advertised at MSC. She texted me to tell me about</p> <p>16 it, and I told her, You have my resume, so apply.</p> <p>17 And then I told her that I could ask Al about it.</p> <p>18 So this is just prior to my being put on</p> <p>19 paid leave. I felt like the handwriting was on the</p> <p>20 wall, and I better start looking at other</p> <p>21 opportunities. But that's -- that's the gist of it.</p> <p>22 But I wasn't the one who found the thing at MSC.</p> <p>23 That was Jan.</p> <p>24 Q. And the -- the text that was sent on</p> <p>25 June 23rd to Mr. Goode, was that the first time that</p>	<p style="text-align: right;">419</p> <p>1 an MSC job in -- in Tampa. But the only thing I</p> <p>2 would say is with MSC, I never got to an interview</p> <p>3 with M -- MSC that -- on my recollection. I don't</p> <p>4 recall ever interviewing where -- I may have put in</p> <p>5 for something, but I don't recall ever being</p> <p>6 interviewed by them. So that's why I'm -- I'm</p> <p>7 reluctant to say that those were the exact same</p> <p>8 thing.</p> <p>9 Q. Look at the next entry, which is 292, and</p> <p>10 it's a text dated July 1st, 2014 to Scott Fuller,</p> <p>11 right?</p> <p>12 A. Um-hmm.</p> <p>13 Q. And Scott is with MSC, correct?</p> <p>14 A. Okay.</p> <p>15 Q. Is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And you say, I wanted to thank you</p> <p>18 for taking your time to come meet with me.</p> <p>19 Did you meet with Mr. Fuller around that</p> <p>20 time?</p> <p>21 A. I -- I met with Mr. Fuller. He --</p> <p>22 Mr. Goode brought him along. We had a meal at a</p> <p>23 restaurant in Massachusetts to which he introduced me</p> <p>24 to Scott Fuller, which was his boss. So this, I'm</p> <p>25 thanking him for doing that, and, apparently, you</p>
<p style="text-align: right;">418</p> <p>1 you reached out to him about potential employment</p> <p>2 with MSC?</p> <p>3 A. The texts that we're showing here were</p> <p>4 between me and Jan. What texts are you referring to?</p> <p>5 Q. Look at line 279.</p> <p>6 A. Oh, yeah, that is -- yup. That's from me</p> <p>7 to Al Goode.</p> <p>8 Q. Right. Was that the first time that you</p> <p>9 reached out to him about potential employment at MSC?</p> <p>10 A. Yeah, I believe so.</p> <p>11 Q. I'm going to refer you to line 290.</p> <p>12 A. Okay.</p> <p>13 Q. This is an email -- a text, I'm sorry, from</p> <p>14 your wife to a group and it's dated June 30 of 2014,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it says, Dad's interview went excellent</p> <p>18 today.</p> <p>19 What interview was she referencing?</p> <p>20 A. I'm not even sure what one it would be.</p> <p>21 Obviously, I didn't get the job.</p> <p>22 Q. Look at the next line, 291. It says, MSC</p> <p>23 Industrial. Does that refresh your recollection?</p> <p>24 A. Yeah, it possibly was. I mean, it's right</p> <p>25 at the same time, so I would think that it might be</p>	<p style="text-align: right;">420</p> <p>1 know, we had clicked to apply to jobs with MSC at</p> <p>2 these various locations. And I was probably just</p> <p>3 reaching out to him, thank you for meeting -- so we</p> <p>4 didn't meet him based on a specific job. That was</p> <p>5 just an introduction that Al made and I was trying to</p> <p>6 leverage that meeting with Scott Fuller, Al's boss,</p> <p>7 into possibly getting some influence by him to see if</p> <p>8 I could actually get an interview in these other job</p> <p>9 opportunities.</p> <p>10 Q. Look down at the bottom of that page, the</p> <p>11 entry 296. It's a text message from Ms. Baker to</p> <p>12 David Wylie dated July 2nd, 2014.</p> <p>13 A. Okay.</p> <p>14 Q. In the second sentence, it says, They tried</p> <p>15 to offer (inaudible) --</p> <p>16 THE COURT REPORTER: I'm sorry,</p> <p>17 Ms. Bertram. I can't hear you.</p> <p>18 BY MS. BETRAM:</p> <p>19 Q. It says, They tried to offer a pitiful</p> <p>20 severance package and he said no way, so they're</p> <p>21 renegotiating.</p> <p>22 Was that a severance package that was</p> <p>23 offered to you by Smith &amp; Wesson?</p> <p>24 A. Mr. Cicero in one of our meetings before I</p> <p>25 went on paid leave offered me two weeks' severance or</p>

Baker, Earl Donald - Vol. II

September 25, 2020

45 (Pages 421 to 424)

<p style="text-align: right;">421</p> <p>1 something like that. It was -- it was like some  2 pitiful amount, two weeks or whatever. And my reply  3 was -- at that point was \$400,000. And he said, Why  4 did you arrive at that figure? And I said, I did  5 some research on Sarbanes-Oxley settlements and that  6 the average settlement was over 700 grand and that I  7 felt like I'm giving them a discount over what would  8 be normal. And he said he would take that to his  9 boss.</p> <p>10 So that's her -- and we discussed that in  11 my prior deposition. This is her recounting  12 secondhand from her to her brother of the same thing  13 that I told you about.</p> <p>14 Q. In the next sentence -- well, after the  15 next sentence, it says, He's on vacation for then  16 exit two weeks. I guess that's "the next two weeks."</p> <p>17 Is it true that you went on vacation for  18 two weeks at that point?</p> <p>19 A. Yes. Mr. Cicero documented that, that he  20 said -- you know, I told him that I would -- had  21 vacation time. I'd like to take it and kind of  22 reconsider where I'm -- I'm at with the company.  23 Mr. Cicero and I had a conversation that was not  24 good. He's -- so I -- I asked for -- I said, I know  25 it's customary to get -- to put in for vacations a</p>	<p style="text-align: right;">423</p> <p>1 potential employment with MSC, right?</p> <p>2 A. Yes, or -- or the possibility of him  3 pulling a few strings so that I might be considered  4 more than just clicking on the website.</p> <p>5 Q. And you said -- you say to him in the next  6 to the last line, I had a second interview with  7 Guhring, G-u-h-r-i-n-g, Guhring --</p> <p>8 A. Um-hmm. Yes.</p> <p>9 Q. -- yesterday. What's Guhring?</p> <p>10 A. Guhring --</p> <p>11 Q. A person or a company?</p> <p>12 A. Guhring is a grind house that -- they make  13 -- their primary thing is drills and those type of  14 things. So it would be in my wheelhouse as far as my  15 experience, and so I did interview with them, and it  16 eventually led to a third interview, which I thought  17 I would get, and I did not.</p> <p>18 So, at this point, they were just phone  19 conversations.</p> <p>20 Q. Go to entry 311. This is a July 12, 2014  21 text.</p> <p>22 A. Okay.</p> <p>23 Q. So Mr. O'Brien had sent an -- an email to  24 Anne Bruce, right?</p> <p>25 A. Okay. I read it.</p>
<p style="text-align: right;">422</p> <p>1 certain time ahead of time. I said, I won't be able  2 to do that. Would it be all right if I took my  3 vacation. And Mr. Cicero said yes, I'll work that  4 out.</p> <p>5 So I did take a vacation, a two-week  6 vacation, right over the 4th of July type weekend,  7 and that's what this refers to.</p> <p>8 Q. And she says next, For now, we're moving  9 back to Ohio until he gets another job.</p> <p>10 Did you at that point move back to Ohio?</p> <p>11 A. That -- no, we did not. That was my --  12 that was her guess at that point what we would  13 probably do.</p> <p>14 Q. And did you not move back to Ohio at some  15 point while you were on administrative leave?</p> <p>16 A. No. No. We -- we moved back to Ohio in  17 December of 2014. December 14th to be exact.</p> <p>18 Q. And let's go to entry 301, and I'll give  19 you a chance to read it. It's a little longer than  20 some of the others.</p> <p>21 A. Okay.</p> <p>22 Q. This is an email dated July 9, 2014 from  23 you to Mr. Fuller at MSC, right?</p> <p>24 A. Yes.</p> <p>25 Q. And you're, again, reaching out about</p>	<p style="text-align: right;">424</p> <p>1 Q. And do you recall that Mr. O'Brien sent an  2 email to Ms. Bruce?</p> <p>3 A. Ron had told me a couple different  4 occasions that he sent something. So I'm not sure  5 exactly what it's referring to. He had told me that  6 he had sent something to Ms. Bruce. He also told me  7 that he -- he had sent something to Mr. Debney.</p> <p>8 So I -- I am -- I would assume that it  9 references that.</p> <p>10 Q. And --</p> <p>11 THE COURT REPORTER: What was the last name  12 you said? Sent something to Mr. What?</p> <p>13 THE DEPONENT: Debney.</p> <p>14 MS. BETRAM: Debney.</p> <p>15 THE COURT REPORTER: Debney.</p> <p>16 THE DEPONENT: Debney was the CEO.</p> <p>17 THE COURT REPORTER: Oh, okay. Thank you.</p> <p>18 BY MS. BETRAM:</p> <p>19 Q. And did you -- did you review any of  20 Mr. O'Brien's emails before he sent them to Ms. Bruce  21 or Mr. Debney?</p> <p>22 A. On -- there was at lease one occasion where  23 he had. Ron had a tendency to -- at the time he  24 called me, I think he was maybe inebriated, and he  25 had written an email and asked me if I would look at</p>

Baker, Earl Donald - Vol. II

September 25, 2020

46 (Pages 425 to 428)

<p style="text-align: right;">425</p> <p>1 it. I don't know if that happened more than one  2 occasion. I know that -- it's possible it could have  3 happened more than once. But I do recall at least  4 one occasion where he asked me to review what he had  5 written.  6 Q. And did you make any revisions to his  7 drafts?  8 A. I -- I think I did, but I don't know. Ron  9 was prone to writing things in all caps and -- you  10 know, he was a friend and he was -- he wasn't in the  11 best of shape when he wrote the things. So I may  12 have made some suggestions, but I can't recall  13 specifically if I had.  14 Q. Did you write any portion of the emails  15 that Mr. O'Brien sent to Ms. Bruce or to Mr. Debney?  16 A. I -- I may have rewritten part -- parts of  17 it because I don't -- like I say, what he told to me  18 verbally, I don't think he was successful in putting  19 it into words, so I may have helped him put it in a  20 legible form, if you will.  21 Q. Go to entry 328. You were providing some  22 in -- this is a July 12th, 2014 email from you to  23 Ms. Baker. It relates to -- is that related to a job  24 offer that you'd received at that point?  25 A. It appears as such, but I -- I don't know</p>	<p style="text-align: right;">427</p> <p>1 recollection is they were pretty serious. They  2 actually flew me to Milwaukee. But I don't know if  3 we -- to be honest, if we got to the point of  4 discussing money.  5 Q. Um-hmm. Go to entry 360.  6 A. Okay.  7 Q. Entry 360 is a July 27, 2014 text from  8 Ms. Baker to your daughter, Katie Barnett, right?  9 A. Um-hmm.  10 Q. Is that a yes?  11 A. What was it, three --  12 Q. Three sixty.  13 A. Oh, I was reading the wrong one. I'm  14 sorry.  15 Q. Okay.  16 A. Yes, it's from me to Ron O'Brien.  17 Q. I'm looking at 3-6-0 that starts, Still  18 employed and still on paid leave.  19 MR. LEE: Yeah, I think you were looking at  20 359, Earl. The same date, but it's the one below  21 that, I think.  22 A. It's gotten a little bit dark here. It's  23 cloudy. Let me turn the light on.  24 Q. The one I see that says 360 is -- is  25 July 21st, 2014, between me and Ron O'Brien: I agree</p>
<p style="text-align: right;">426</p> <p>1 specifically which one it was. But I know the -- the  2 numbers that I'm referring to and what it meant about  3 the bonus.  4 Q. And in or around July 12, 2014, did you  5 receive a job offer?  6 A. It may have been in -- in connection with  7 Guhring, but I did not receive the job offer, no.  8 Q. Okay. Do you know why --  9 A. They did --  10 Q. -- why you did not -- go ahead. I'm sorry.  11 A. Go ahead. I -- I just was saying that, as  12 I said, I did receive a subsequent email or interview  13 with Guhring after, but in the end result, I did not  14 get the job.  15 Q. And do you know why you did not receive  16 that position?  17 A. I know what I was told.  18 Q. What were you told?  19 A. That there was just too much going on with  20 the Smith &amp; Wesson thing that, you know, they just  21 passed.  22 Q. Okay. Did they ever discuss with you  23 compensation or benefits that they would be offering?  24 A. I don't know that they did. If this is  25 about that, then they would have. But my</p>	<p style="text-align: right;">428</p> <p>1 that they have a time bomb on their hands and they  2 better start doing their job or else.  3 MR. LEE: Okay. Hold on. Are you looking  4 at Exhibit 4, line 360?  5 THE DEPONENT: Yes, I believe so.  6 BY MS. BETRAM:  7 Q. Are you looking at the same set of texts  8 that we were just looking at?  9 A. Yeah, no different book.  10 MR. LEE: Okay. So the hard copy and what  11 you and I are looking at, Connie, must be a  12 little different.  13 MS. BETRAM: Right.  14 BY MS. BETRAM:  15 Q. Is this part of the set that you just  16 received by Federal Express?  17 A. Yeah. I'm in the same book. I just  18 flipped a few pages.  19 Q. Okay.  20 A. Three six -- 361 is -- starts out, Rebecca  21 complained to me that she can't get overtime.  22 Is that what your 361 says?  23 MR. LEE: No. Our --  24 MS. BETRAM: No.  25 MR. LEE: -- 361 says, Ugh, I don't -- I</p>

Baker, Earl Donald - Vol. II

September 25, 2020

47 (Pages 429 to 432)

<p style="text-align: right;">429</p> <p>1 know you got -- I know guys like Larry and blah, 2 blah, blah, so ...</p> <p>3 MS. BETRAM: Well, let's -- let's -- 4 MR. LEE: We're just looking at -- yeah, 5 we're looking at two different documents.</p> <p>6 BY MS. BETRAM: 7 Q. Yeah. Let's -- let's -- let's go by the 8 date, which is -- it's in date -- date and time 9 order. Look at July 27, 2014 at 11:11 P.M.</p> <p>10 <b>A. Okay. July 27th. Okay. I got it.</b> 11 Q. Okay. And Ms. Baker tells your daughter, 12 Larry told a plumber at Smith &amp; Wesson that he's 13 going to tear Dad's head off and S -- -- down his 14 neck. Someone reported it to HR.</p> <p>15 Do -- do you know the name of the plumber 16 that she references in her text?</p> <p>17 <b>A. When I was told the scenario by Lamonte 18 Parks, he just mentioned that it was a plumber but 19 did not give me his name.</b></p> <p>20 Q. And when did Mr. Parks report this to you? 21 <b>A. I'm not sure when, but it would have been 22 shortly after I was on paid leave and I told 23 Mr. Suraci, and I'm sure there would be an email to 24 that effect.</b></p> <p>25 Q. And the last line says, Someone reported it</p>	<p style="text-align: right;">431</p> <p>1 "the guy that pulled me aside"? 2 <b>A. Yes. I -- I may have asked him -- his 3 initial claims were that he was ordered to only order 4 from Pioneer, and he sent an email to Mr. Debney 5 saying that it -- he was being ordered to order from 6 a higher-priced vendor. At the time, I don't know if 7 I knew where it came from, but he's answering a 8 question that I may have posed to him as to who was 9 it that told you to order from Pioneer. Because that 10 would be important in if somebody is directing his 11 purchases away from what his consideration should be 12 in price, availability, and quality. And so in 13 answer to that query, he is saying Ed Prystupa was 14 the guy that pulled him aside, you know. You can 15 read the email.</b></p> <p>16 Q. And did you ever talk with Ed Prystupa 17 about what Mr. O'Brien told you? 18 <b>A. No. Ed was associated with our department 19 when Stanley was in play. But when Stanley still was 20 at the office, and we shared the office, Ed Prystupa 21 was a friend and would come by and visit him daily, a 22 few times a day. So I would talk to Ed casually.</b></p> <p>23 <b>But once Stanley left, I very seldom ever 24 saw Ed. So -- so I -- I never -- never really had 25 much interaction with Ed Prystupa after Stanley left.</b></p>
<p style="text-align: right;">430</p> <p>1 to HR. Do you know who reported it to HR? 2 <b>A. I don't know what she's referring to there. 3 I think Mr. Parks had a talk with -- with somebody, 4 but then later I received a phone mail -- or phone 5 call from Mr. Cicero saying he had recanted.</b></p> <p>6 Q. Go to July 30, 2014 at 7:42. 7 <b>A. Okay.</b></p> <p>8 Q. It starts, Ed Prystupa. Is that right? 9 <b>A. Yes.</b></p> <p>10 MR. LEE: Sorry. Which one are we at? 11 What's the date and the -- at least the number 12 that you have -- you and I have, Connie? 13 MS. BERTRAM: The number that I have is 14 371.</p> <p>15 THE DEPONENT: That's -- that's what I've 16 got.</p> <p>17 MS. BERTRAM: Okay.</p> <p>18 BY MS. BETRAM: 19 Q. So it says, Ed Prystupa was the guy who 20 pulled me aside and told me to order from Pioneer. I 21 then emailed Debney because it to be strange. You 22 have my email.</p> <p>23 This is from Ron to you, correct? 24 <b>A. Yes.</b></p> <p>25 Q. Do you know what he's referring to as to</p>	<p style="text-align: right;">432</p> <p>1 Q. Let's go to entry 386. This is an 2 August 1st, 2014 text from Ron O'Brien to you. It 3 states, Not a problem. Just tell me what you want to 4 do and when you want me to do it. We need fact and 5 not fiction. I'll give Smith notice of any impending 6 actions.</p> <p>7 Do you know what Mr. O'Brien is referring 8 to in this text? 9 <b>A. Is -- is that from Ron to me?</b></p> <p>10 Q. It appears to be, yes. 11 <b>A. I have no clue what he's talking about.</b></p> <p>12 Q. But at that point, you were on 13 administrative leave, right? 14 <b>A. Yes.</b></p> <p>15 Q. And Mr. O'Brien was still working for the 16 company? 17 <b>A. Yes.</b></p> <p>18 Q. Did you ever ask him to gather any 19 information or documents relating to your claims? 20 <b>A. I don't know that I did specifically, but 21 I -- I don't think that -- you know, it's possible 22 that I could have, but I don't believe that I did.</b></p> <p>23 Q. Do you recall him providing any documents 24 to you while you were on administrative leave? 25 <b>A. No, no. He never gave me any documents,</b></p>



Baker, Earl Donald - Vol. II

September 25, 2020

48 (Pages 433 to 436)

<p style="text-align: right;">433</p> <p>1 and I don't recall asking for any. But, no, he never 2 gave me any documents.</p> <p>3 Q. Let me just -- I have one quick question 4 back at 371, the text related to Ed Stripe -- Pry --</p> <p>5 A. Prystupa. Okay.</p> <p>6 Q. That relates to events in 2010, correct?</p> <p>7 A. Pardon?</p> <p>8 Q. That -- that relates to events in 2010, 9 correct?</p> <p>10 A. I have --</p> <p>11 MR. LEE: Objection to form.</p> <p>12 A. -- no clue.</p> <p>13 Q. Do you know -- do you know the date of the 14 events described by Mr. O'Brien to you?</p> <p>15 A. No.</p> <p>16 Q. Go to entry 396. It's a -- an August 4, 17 2014 text message from you to Ron.</p> <p>18 A. Okay.</p> <p>19 Q. And you say, I emailed Debney that Larry 20 said he would F us, and if we screamed about it, he 21 would pour sand on it next time.</p> <p>22 What was the source of that alleged 23 statement by Larry Flatley?</p> <p>24 A. He was sitting next to me.</p> <p>25 Q. And when did -- when did he allegedly make</p>	<p style="text-align: right;">435</p> <p>1 to all of us was that, I will F you in the ass and 2 that if you scream about it, I will pour sand on it 3 the next time, which I felt it applied to the 4 conversation just prior with me, and that he was 5 telling the group if anyone were to whistle blow or 6 to take information to management about me, I will F 7 you and -- and if you tell them about what I'm doing 8 to you, I'll pour sand on it and do it again.</p> <p>9 So it was a -- it was a warning to all of 10 us, Don't F with me, and I will take you out.</p> <p>11 Q. And the -- the three individuals that you 12 mentioned other than Mr. Flatley were the three other 13 cell coordinators, correct?</p> <p>14 A. Under Larry, yes.</p> <p>15 Q. Okay. And so you reported these comments 16 to HR?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know whether they spoke to the 19 other cell coordinators about these two alleged 20 comments?</p> <p>21 A. At the time, it was not -- I didn't hear 22 anything for months. Then when Mr. Suraci became 23 involved, it came up in one of our conversations and 24 he says, Well, this is the first time I'm hearing 25 about it. And then he said he was going to circle</p>
<p style="text-align: right;">434</p> <p>1 that comment?</p> <p>2 A. I don't know the exact date, but it would 3 have been in 2013 because I -- I took that -- that 4 comment to HR and spoke to Kathy Salvador about it.</p> <p>5 Q. And when he made that comment, was anybody 6 else present?</p> <p>7 A. Yes.</p> <p>8 Q. Who else was there?</p> <p>9 A. Dave Billingsly, Tony Nelson, and Charlie 10 Martin.</p> <p>11 Q. And was the comment, as you understood it, 12 directed to you or to the entire group?</p> <p>13 A. I thought it was directed to the entire 14 group, but it had a -- it was meant to have a higher 15 significance to me. We had just had a -- a little 16 bit of a talk where he was kind of like warning me 17 type of thing about well, I don't know. That's it. 18 I don't even know how it would be even -- how you 19 could say it. It just -- he was kind of puffing his 20 chest up and like -- he knew that there was 21 allegations made related to vendor improprieties, and 22 I think he was asserting his authority.</p> <p>23 So he left that meeting, went directly into 24 the staff meeting, which Mr. Billingsly, Tony Nelson 25 -- and Charlie Martin said something, and his reply</p>	<p style="text-align: right;">436</p> <p>1 back with Kathy to find out if she had documented it. 2 And my recollection is that at that point in February 3 that it had -- I remember telling him I thought that 4 it was six months prior to that. So if you backtrack 5 six months from February, that was when the statement 6 was made.</p> <p>7 But they never got back to me to find out 8 if Kathy had, in fact, documented it. But at some 9 point, I believe, Anne Bruce told me that the 10 individuals that she asked that were in that meeting 11 didn't recall. She didn't say it didn't happen. 12 They said they didn't recall. So from my standpoint, 13 that told me that they're just not saying. Somebody 14 doesn't say that to another -- you're not a man; you 15 don't -- you may not get this. But one man does 16 not say that to another man and you wouldn't recall 17 it.</p> <p>18 Q. And -- and you don't know -- you don't have 19 personal knowledge of what the other cell 20 coordinators told Ms. Bruce or anyone reporting to 21 Ms. Bruce, right?</p> <p>22 A. No. I did -- I did get a report from her 23 that they said they didn't recall that statement. 24 That's -- that's all I know.</p> <p>25 Q. Go to the entry for 424.</p>

Baker, Earl Donald - Vol. II

September 25, 2020

49 (Pages 437 to 440)

<p style="text-align: right;">437</p> <p>1 MR. LEE: 424, did you say?</p> <p>2 MS. BETRAM: Yes, at the very top of one of</p> <p>3 the pages.</p> <p>4 BY MS. BETRAM:</p> <p>5 Q. Do you see that entry?</p> <p>6 <b>A. Yup.</b></p> <p>7 Q. It's from Ms. Baker to Judy Hively; is that</p> <p>8 right?</p> <p>9 <b>A. Yes, um-hmm.</b></p> <p>10 Q. And who is Ms. Hively?</p> <p>11 <b>A. It's my wife's twin sister.</b></p> <p>12 Q. Okay. She says in the second sentence,</p> <p>13 Meanwhile, we moved out of our apartment yesterday</p> <p>14 and put everything into storage.</p> <p>15 <b>A. Um-hmm.</b></p> <p>16 Q. Our way to Chicago -- on our way to Chicago</p> <p>17 to stay with Mike and Lisa for a bit.</p> <p>18 Did you move out of your apartment in --</p> <p>19 <b>A. We moved out of our apartment --</b></p> <p>20 Q. -- move out of your apartment at that</p> <p>21 point?</p> <p>22 <b>A. We moved out of our apartment in Enfield</b></p> <p>23 <b>because the lease was up and we didn't know if we</b></p> <p>24 <b>wanted to stay there. We were also on paid leave, so</b></p> <p>25 <b>we -- since things were up in the air at this point,</b></p>	<p style="text-align: right;">439</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. And that's an email from you. Do you know</p> <p>3 the phone number that you were sending that to, who</p> <p>4 that was?</p> <p>5 <b>A. No, I don't even know whose that number is.</b></p> <p>6 Q. Okay. It says, Smith &amp; Wesson never called</p> <p>7 back and my attorney now feels they're trying to run</p> <p>8 out the clock. My attorney started to assemble</p> <p>9 things to file on -- things to file Monday.</p> <p>10 And this is dated September 16, 2014. At</p> <p>11 that point, was your attorney starting to put</p> <p>12 together your filing before OSHA?</p> <p>13 <b>A. I -- I assume that that's what that means.</b></p> <p>14 <b>You'd have to --</b></p> <p>15 MR. LEE: Objection. First of all --</p> <p>16 <b>A. -- talk to him.</b></p> <p>17 MR. LEE: -- don't -- yeah, objection to</p> <p>18 the form of the question. Earl, you should not</p> <p>19 go into any discussion you had with lawyers.</p> <p>20 THE DEPONENT: Gotcha.</p> <p>21 MR. LEE: I mean, if you know what he did</p> <p>22 at that point in time or -- and all that, that's</p> <p>23 fine. But do not go into any communications</p> <p>24 between you and your lawyer, even back then.</p> <p>25 BY MS. BETRAM:</p>
<p style="text-align: right;">438</p> <p>1 <b>I was interviewing everywhere at other places, I</b></p> <p>2 <b>didn't know if things would work out with Smith &amp;</b></p> <p>3 <b>Wesson, and we'd have to find another apartment or</b></p> <p>4 <b>whether or not we were going to be, in fact, offered</b></p> <p>5 <b>a job elsewhere and move there.</b></p> <p>6 <b>So, in the interim, we decided to go stay</b></p> <p>7 <b>with our daughter in Chicago.</b></p> <p>8 Q. Okay.</p> <p>9 <b>A. I think it explains that in 426.</b></p> <p>10 Q. Go to 460. This is an August 21, 2014 text</p> <p>11 from you, it looks like, to Pavel, is that right,</p> <p>12 P-a-v-e-l?</p> <p>13 <b>A. Pavel Tarrawonga, yes.</b></p> <p>14 Q. I've only got one question on this. Did --</p> <p>15 did -- did Pavel ever respond back to you to your</p> <p>16 recollection?</p> <p>17 <b>A. I don't believe he did.</b></p> <p>18 Q. And do you know whether your attorney has</p> <p>19 ever spoken with him?</p> <p>20 <b>A. I don't believe they did because he didn't</b></p> <p>21 <b>respond back. The number that we were looking for</b></p> <p>22 <b>to -- for -- to see if Pavel had, I ended up getting</b></p> <p>23 <b>through another source. So that would leave me to</b></p> <p>24 <b>believe that Pavel never contacted me back.</b></p> <p>25 Q. Go to entry 475.</p>	<p style="text-align: right;">440</p> <p>1 Q. Go to entry 504 and 505. And those are</p> <p>2 emails or texts of your -- of your wife referring to</p> <p>3 you getting a job in Ohio -- Cleveland, Ohio. Did</p> <p>4 you receive a job offer at that point?</p> <p>5 <b>A. No. As it turned out, no.</b></p> <p>6 Q. Okay.</p> <p>7 MS. BETRAM: That's all I have on -- on</p> <p>8 this exhibit. If you want to take a break, this</p> <p>9 would be a nice place to take a break because I'm</p> <p>10 just about to go into another topic, which I'll</p> <p>11 try to move through really quickly. But I didn't</p> <p>12 want to get halfway into it and then -- or just a</p> <p>13 couple questions into it.</p> <p>14 So why don't we just --</p> <p>15 MR. LEE: That's fine.</p> <p>16 MS. BETRAM: Okay.</p> <p>17 MR. LEE: I'll -- yeah, that's fine.</p> <p>18 THE VIDEOGRAPHER: Going off the record at</p> <p>19 3:37 P.M.</p> <p>20 (A break was had.)</p> <p>21 THE VIDEOGRAPHER: Back on the record at</p> <p>22 3:50 P.M.</p> <p>23 BY MS. BETRAM:</p> <p>24 Q. Mr. Baker, do you contend that anyone at</p> <p>25 Smith &amp; Wesson retaliated against you with respect to</p>

Baker, Earl Donald - Vol. II

September 25, 2020

50 (Pages 441 to 444)

<p style="text-align: right;">441</p> <p>1 your June of 2013 performance evaluation?</p> <p>2 MR. LEE: Objection to the form of the</p> <p>3 question, but you may answer if you can.</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Who retaliated against --</p> <p>6 MR. LEE: Can -- hold on. Hold on. Can</p> <p>7 you have that question read back, please. Pay</p> <p>8 attention to the dates, please. I thought I</p> <p>9 heard it correctly, but ...</p> <p>10 (Whereupon, the question was read back by</p> <p>11 the reporter.)</p> <p>12 THE DEPONENT: I -- I believe that</p> <p>13 evaluation is full of untruths and --</p> <p>14 MR. LEE: June of 2013. The question was</p> <p>15 June of 2013.</p> <p>16 THE DEPONENT: I'm sorry. I had the wrong</p> <p>17 date.</p> <p>18 MR. LEE: That's why -- that's why I was --</p> <p>19 you know, that's why --</p> <p>20 THE DEPONENT: Okay.</p> <p>21 MR. LEE: -- I was objecting.</p> <p>22 THE DEPONENT: I'm sorry.</p> <p>23 BY MS. BETRAM:</p> <p>24 Q. Let me ask -- let me re-ask the question.</p> <p>25 <b>A. Yes, please. I'm sorry. My head is</b></p>	<p style="text-align: right;">443</p> <p>1 he may answer if he can.</p> <p>2 <b>A. I -- I don't know the legal standard of it,</b></p> <p>3 <b>but I feel that the untruths in that document were a</b></p> <p>4 <b>form of retaliation against me.</b></p> <p>5 Q. And who do you contend retaliated against</p> <p>6 you in connection with that evaluation?</p> <p>7 <b>A. I believe Mr. Flatley that wrote the</b></p> <p>8 <b>evaluation put many false statements in there that</b></p> <p>9 <b>can be proven false, and those who refused to look</b></p> <p>10 <b>into it are complicit and, therefore, a part of that</b></p> <p>11 <b>retaliation.</b></p> <p>12 Q. And who do you contend refused to look into</p> <p>13 the concerns about the evaluation?</p> <p>14 <b>A. I can mention at least one name, but I</b></p> <p>15 <b>would assume there are many more that -- that falls</b></p> <p>16 <b>under the auspices of their job as HR representatives</b></p> <p>17 <b>to look into these things. But when I tried to take</b></p> <p>18 <b>documents to show Mr. Cicero to show that they were</b></p> <p>19 <b>false claims, Mr. Cicero refused to look at them.</b></p> <p>20 Q. So is that the one name that you could</p> <p>21 identify?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. So other than Mr. Flatley and Mr. Cicero,</p> <p>24 do you contend that anybody else retaliated against</p> <p>25 you in connection with your February 2014 evaluation?</p>
<p style="text-align: right;">442</p> <p>1 <b>somewhere else.</b></p> <p>2 Q. Do you contend that anyone at Smith &amp;</p> <p>3 Wesson retaliated against you in connection with your</p> <p>4 June of 2013 performance evaluation?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Do you contend that anybody at Smith &amp;</p> <p>7 Wesson retaliated against you with respect to your</p> <p>8 June 2014 interim performance evaluation?</p> <p>9 MR. LEE: What was the date again?</p> <p>10 MS. BETRAM: I think I may have misspoken.</p> <p>11 MR. LEE: Yeah, that's -- that's -- I think</p> <p>12 you said June and you said interim. That's why I</p> <p>13 was -- objection to the form of the question.</p> <p>14 BY MS. BETRAM:</p> <p>15 Q. Right. I'll strike that question and</p> <p>16 re-ask it.</p> <p>17 Do you contend that anyone at Smith &amp;</p> <p>18 Wesson retaliated against you with respect to your</p> <p>19 February 2014 interim evaluation?</p> <p>20 MR. LEE: Objection --</p> <p>21 <b>A. Yes.</b></p> <p>22 MR. LEE: Objection -- let me do my</p> <p>23 objection but you can -- objection to the form of</p> <p>24 the question, and to the extent Mr. Baker</p> <p>25 understands the legal standards for retaliation,</p>	<p style="text-align: right;">444</p> <p>1 <b>A. I feel people in general have. Possibly</b></p> <p>2 <b>Mr. Fontaine because he told me that he would not</b></p> <p>3 <b>look at the evidence that I presented to him, turned</b></p> <p>4 <b>the review on -- over on his desk upsidedown and</b></p> <p>5 <b>said, As far as we're concerned, this doesn't exist.</b></p> <p>6 <b>It -- it's nothing. It doesn't exist as far as the</b></p> <p>7 <b>company is concerned. It was an outer cycle. It</b></p> <p>8 <b>doesn't exist so we don't need to discuss it.</b></p> <p>9 <b>But later on, he signed that review and it</b></p> <p>10 <b>went into my thing. So I believe he used it as a</b></p> <p>11 <b>form of retaliation against me.</b></p> <p>12 Q. Do you (inaudible) --</p> <p>13 THE COURT REPORTER: I didn't hear that.</p> <p>14 BY MS. BETRAM:</p> <p>15 Q. Do you contend that anyone else retaliated</p> <p>16 against you in connection with that evaluation?</p> <p>17 <b>A. Possibly, but none that I can mention</b></p> <p>18 <b>specifically.</b></p> <p>19 Q. What is the basis for your contention that</p> <p>20 Mr. Flatley, Mr. Cicero, and Mr. Fontaine potentially</p> <p>21 retaliated against you?</p> <p>22 <b>A. If --</b></p> <p>23 MR. LEE: Objection -- objection to the</p> <p>24 form of the question, but you may answer.</p> <p>25 <b>A. If someone says something about you that is</b></p>

<p style="text-align: right;">445</p> <p>1 totally untrue, it's prove -- it's probable that it's  2 based on false statements, but those in a management  3 position that has the ability to look at and rescind  4 those refuse to view or take action on your behalf,  5 that is a form of retaliation, specifically based on  6 the fact that we had an HR policy that mandated that  7 certain actions be taken to avoid that situation.</p> <p>8 So when that action isn't taken, and the  9 only thing that I knew that -- that I did or was told  10 about was reporting what I perceived to be wrongdoing  11 in the company in respect to bribes and vendors and  12 vendor allocation.</p> <p>13 So my performance in my department was  14 double what it had been prior to me being there, both  15 -- in every measure. And I was being singled out and  16 treated differently than other people in the -- the  17 shop. And so I am only left with one conclusion,  18 that it had to do with my submissions that someone  19 was giving more work to one vendor based on gifts and  20 affiliations that weren't in the best interest of  21 Smith &amp; Wesson.</p> <p>22 Q. And why do you believe that the actions of  23 these three individuals were because of your concerns  24 about vendor (inaudible) --</p> <p>25 THE COURT REPORTER: I'm sorry. I can't --</p>	<p style="text-align: right;">447</p> <p>1 Q. And let's focus on the three different  2 individuals that you identified. Why do you believe  3 that Mr. Flatley was aware of your allegations of  4 fraud when he prepared your February 2014 evaluation?</p> <p>5 A. He's the one that wrote the false things  6 right off the bat. The things that I had -- the  7 documents that I produced have implied that if he  8 wasn't a part of the problem, that he certainly  9 should be and he would be aware of it.</p> <p>10 So when you have someone that is acting to  11 make one vendor prominent that's not the cheapest,  12 it's not the best, and you have gifts being given and  13 he tells me about a quid pro quo, I feel anyone's  14 reasonable assumption would be that he is involved  15 and that any action that wasn't warranted by my  16 performance would be fruit from that -- that  17 individual in the form of retaliation.</p> <p>18 Q. I don't think you're understanding my  19 question. We're -- we're focusing on an evaluation  20 that was prepared in February of 2014, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know whether Mr. Flatley even knew  23 about your allegations of fraud when he prepared his  24 evaluation?</p> <p>25 A. Well, I -- I understood your question to</p>
<p style="text-align: right;">446</p> <p>1 I'm just not hearing you. It's garbled.  2 BY MS. BETRAM:</p> <p>3 Q. What is the basis for your belief that they  4 retaliated against you based on your concerns about  5 vendors as opposed to any other potential motive?</p> <p>6 A. I -- as I explained, I -- I can demonstrate  7 by the pitch board and -- which is the measure that  8 we determine of each department that my production  9 had more than doubled, which in my industry, if you  10 can get a 20 percent increase in production, that's  11 phenomenal. To have 115 percent increase in  12 production, it's unheard of.</p> <p>13 And in the same place, to increase quality  14 by 30 percent and to set up a computerized system  15 that made us more efficient, by performance, I knew  16 that there was -- that the things that Flatley was  17 saying were total falsehoods.</p> <p>18 So they didn't have anything specific that  19 -- that would explain their actions that made me  20 stand out enough to where I'm being singled out,  21 judged by a different set of criteria than anyone  22 else in the shop other than the fact that I made  23 submissions that I believed that fraud was -- had  24 taken place at Smith &amp; Wesson and that purchases were  25 being directed contrary to the company's interests.</p>	<p style="text-align: right;">448</p> <p>1 say what would make you think that. So do I have  2 specific information that he knew? At that time, no.</p> <p>3 Q. And what about Mr. Fontaine; do you have  4 specific information that he was aware of your  5 allegations of fraud as of February of 2014 when the  6 evaluation was prepared?</p> <p>7 A. I have no way of either knowing that he  8 had, but his actions seemed to imply that he did.</p> <p>9 Q. And for Mr. Cicero, you didn't speak with  10 him until late March or early April of 2014, right?</p> <p>11 A. I think that's right.</p> <p>12 Q. And do you have any reason to believe that  13 he was aware of your allegations of fraud when the  14 evaluation was prepared in February of 2014?</p> <p>15 A. At that time, he wasn't even privy to it  16 until I spoke with him. But if he's charged with  17 doing the investigation and he doesn't want to look  18 at evidence that I'm trying to present to him,  19 physical proof, and he doesn't want to see it, then  20 that tells me his investigation isn't interested in  21 truth or proof. It's not deductive reasoning; it's  22 inductive reasoning. He's got a conclusion that he  23 wants things to fit to. He doesn't want to look at  24 all the evidence and make a conclusion. He's  25 rejecting the evidence.</p>

Baker, Earl Donald - Vol. II

September 25, 2020

52 (Pages 449 to 452)

<p style="text-align: right;">449</p> <p>1           <b>So I don't know of any investigation where</b>  2           <b>a person would say, I don't really want to see the</b>  3           <b>evidence. I just want to make a conclusion. That</b>  4           <b>tells me that that person isn't interested in truth;</b>  5           <b>he's interested in a preset agenda.</b>  6           Q. Are you aware of any witness that will  7           support your contention that you were subjected to  8           retaliation through your February 2014 interim  9           evaluation?  10          MR. LEE: Objection -- objection to the  11          form of the question, but you could answer if you  12          want, if you can.  13          <b>A. I don't spend a whole lot of my time</b>  14          <b>thinking about what might be in somebody else's mind.</b>  15          <b>And -- but if you're asking for it, I would say that</b>  16          <b>I feel that many people that saw what took place at</b>  17          <b>Smith &amp; Wesson would conclude that I had been</b>  18          <b>retaliated against.</b>  19          Q. And who are those people by name?  20          <b>A. I would say Ed Anischik, Peter Lemlin,</b>  21          <b>Lamonte Parks, Leo Jendrezak, Stanley Kapek, Stanley</b>  22          <b>Wichorik, Dwayne Reese, Mike Jurga. I -- I think</b>  23          <b>that, you know, anyone that saw what unfolded would</b>  24          <b>conclude that I had been retaliated against.</b>  25          Q. And other than the evaluation itself, can</p>	<p style="text-align: right;">451</p> <p>1           MS. BETRAM: Let's not coach the witness  2           any further.  3           MR. LEE: No, no, no. I objected --  4           MS. BETRAM: I mean, you can give him the  5           exhibit numbers, so maybe that would help him  6           out.  7           MR. LEE: Okay. You want me --  8           BY MS. BETRAM:  9           Q. One twenty-three, one forty-one -- flip  10          around. Look for them. John wants you to find some  11          exhibits, Mr. Baker. Don't you think you can answer  12          your questions on your own?  13          MR. LEE: No --  14          <b>A. Well, it sounds by the numbers you give</b>  15          <b>that now you're trying to help me too.</b>  16          Q. I made them up. I made them up.  17          MR. LEE: Okay.  18          BY MS. BETRAM:  19          Q. Okay. I'm going to ask a question, and  20          we're not going to have any more coaching.  21          Other than the evaluation, itself, is there  22          any piece of evidence, any documentary evidence you  23          can point to to support your contention that you were  24          retaliated against in connection with your  25          February 2014 evaluation?</p>
<p style="text-align: right;">450</p> <p>1           you identify any exhibits that support your  2           contention that you received your interim -- interim  3           evaluation February of 2014 because you complained  4           about fraud with respect to vendors?  5           <b>A. You want documented evidence or you're</b>  6           <b>talking about my -- that's -- whether that's my</b>  7           <b>assessment?</b>  8           Q. What documents support your view that you  9           were subjected to retaliation in connection with your  10          February 2014 interim evaluation?  11          MR. LEE: Objection to the form of the  12          question, but you could answer if you can. We  13          saw at least one today, but go ahead. I mean --  14          MS. BERTRAM: Let's not coach the witness,  15          John. Come on.  16          MR. LEE: You're the one who asked. You're  17          the one who asked how -- what is the evidence of  18          his concerns and how would they know. Well,  19          there are emails about it, but that's --  20          MS. BERTRAM: Are -- are you testifying  21          now, John, or is the witness testifying?  22          MR. LEE: No, no, no. I -- I -- I said  23          I --  24          MS. BERTRAM: You don't have to --  25          MR. LEE: -- object --</p>	<p style="text-align: right;">452</p> <p>1           MR. LEE: Same objection. Objection to the  2           form of the question. But go ahead and answer if  3           you can.  4           <b>A. I think that in order to answer it</b>  5           <b>correctly, it's like I'd have to put myself in -- in</b>  6           <b>the position of each -- each and every person I just</b>  7           <b>mentioned and say see how much of what they saw is</b>  8           <b>relevant. But I feel that the totality of what I've</b>  9           <b>got screams. It doesn't just hint that there was</b>  10          <b>retaliation; it screams that there was.</b>  11          <b>So I can go through each and every person</b>  12          <b>and then their purview, how much of the items did</b>  13          <b>they see and determine whether they could have</b>  14          <b>deduced that conclusion from what they knew.</b>  15          <b>My view is that all those people I</b>  16          <b>mentioned would be privy to the things that were in</b>  17          <b>these documents that would show that I was retaliated</b>  18          <b>against. But as far as do I know what one specific</b>  19          <b>document that says let's retaliate against Earl, I --</b>  20          <b>I can only say that Mr. Suraci's view was that I was</b>  21          <b>being -- that the review was fraudulent and that I</b>  22          <b>was -- Suraci was -- said that I was being</b>  23          <b>subversively undermined by Mr. Flatley.</b>  24          <b>So I guess that would be one document that</b>  25          <b>would say that.</b></p>



Baker, Earl Donald - Vol. II

September 25, 2020

53 (Pages 453 to 456)

<p style="text-align: right;">453</p> <p>1 Q. Do you contend that you were retaliated 2 against in connection with your June 2014 performance 3 evaluation?</p> <p>4 MR. LEE: Same objection. You can answer 5 if you can --</p> <p>6 <b>A. I'm sorry, but I thought that's what I just</b> 7 <b>answered.</b></p> <p>8 Q. We were talking about the February 2014 9 interim evaluation.</p> <p>10 <b>A. Oh, okay. Gotcha. The answer would be the</b> 11 <b>same there.</b></p> <p>12 Q. Now, you had --</p> <p>13 <b>A. That yes --</b></p> <p>14 Q. You had indicated that Mr. Flatley, Mr. -- 15 possibly Mr. Fontaine, and Mr. Cicero retaliated 16 against you with respect to the February 2014 17 performance evaluation. Do you contend that anyone 18 else retaliated against you in connection with the 19 June 2014 evaluation?</p> <p>20 MR. LEE: Objection to the form of the 21 question. It misstates the witness's prior 22 testimony, but you could go ahead and answer.</p> <p>23 <b>A. I -- I believe that Ms. Bruce became more</b> 24 <b>prominent in that last review and that I do believe</b> 25 <b>her actions make her part and parcel of the</b></p>	<p style="text-align: right;">455</p> <p>1 (Whereupon, the question was read back by 2 the reporter.)</p> <p>3 THE DEPONENT: I reported improprieties to 4 Ann Glica, to Kathy Salvador, and those I believe 5 led to Mr. Flatley finding out through whatever 6 means that I had informed on him, and so the 7 start of it was my -- my submissions to Ms. Glica 8 and Ms. Salvador of improprieties that I 9 perceived went on.</p> <p>10 BY MS. BETRAM:</p> <p>11 Q. And what evidence do you have that 12 Mr. Flatley was aware that you had reported 13 improprieties?</p> <p>14 <b>A. I have direct testimony to me from</b> 15 <b>Mr. Cicero that he -- he was told. And I have emails</b> 16 <b>of Ms. Bruce threatening to tell him. Even though I</b> 17 <b>was promised confidentiality, they violated it.</b> 18 <b>And I was told directly that he was made</b> 19 <b>aware by Ms. Glica -- or by Ms. Bruce and -- and</b> 20 <b>Mr. Cicero.</b></p> <p>21 Q. Well, let's unpack this a little bit. You 22 said there's direct testimony by Rob Cicero that 23 Larry Flatley was told. What are you referring to?</p> <p>24 <b>A. He told me. I mean testimony to me. I</b> 25 <b>just -- I'm -- I'm -- I don't know what terms to use</b></p>
<p style="text-align: right;">454</p> <p>1 retaliation that took place.</p> <p>2 Q. Anyone else?</p> <p>3 <b>A. Well, anyone that was associated with it.</b> 4 <b>I can't see behind the -- the scenes which -- which</b> 5 <b>person, but when an injustice is being perpetrated</b> 6 <b>against you, anyone whose job it is to keep that from</b> 7 <b>happening, may, in fact, be part and parcel of it.</b> 8 <b>So I can't tell you a conclusive list because as time</b> 9 <b>will tell, you'll find out who might -- possibly find</b> 10 <b>out who might be aware that did nothing and was</b> 11 <b>complicit in their -- their inaction to keep me from</b> 12 <b>losing my job when all I did was report wrongdoing by</b> 13 <b>somebody that has been subverting the truth.</b></p> <p>14 Q. And what actions did you take that you 15 contend led you to be retaliated against in 16 connection with the June 2014 performance evaluation?</p> <p>17 MR. LEE: Objection to the form of the 18 question, but you may answer.</p> <p>19 Can I have that question read back?</p> <p>20 (Whereupon, the question was read back by 21 the reporter.)</p> <p>22 MR. LEE: Object to the form of the 23 question, but you can answer if you can.</p> <p>24 THE DEPONENT: Yeah, I'm not sure I 25 understand. Could you read it one more time?</p>	<p style="text-align: right;">456</p> <p>1 all the time. He told me flat out that he had talked 2 to Larry about it. And then I was told that Anne 3 Bruce had told him as well.</p> <p>4 Q. And what did Mr. Cicero say (inaudible)?</p> <p>5 <b>A. What did he say what? I'm sorry.</b></p> <p>6 Q. What did Mr. Cicero say that he had told 7 Mr. Flatley about your concerns?</p> <p>8 THE COURT REPORTER: I'm not -- you're 9 garbled.</p> <p>10 BY MS. BETRAM:</p> <p>11 Q. What did Mr. Cicero tell you that he had 12 told Mr. Flatley about your concerns?</p> <p>13 <b>A. He said he told him everything. He said in</b> 14 <b>order to investigate this thing, I had to at some</b> 15 <b>point talk to him. And I told him that wasn't what</b> 16 <b>you told me when you -- when I first met with him in</b> 17 <b>his office that he said we would hold this in</b> 18 <b>confidentiality. And I feel that that ended up</b> 19 <b>causing a scorched earth policy for me in that</b> 20 <b>Flatley was made aware of what I told about him.</b></p> <p>21 <b>And -- and he retaliated, just as that</b> 22 <b>statement you asked about me about whether he had</b> 23 <b>said he was going to do to -- to me and those who</b> 24 <b>screamed about it. He followed through on those</b> 25 <b>words. So when he knew that I had done this, then he</b></p>

<p style="text-align: right;">457</p> <p>1 did exactly what he said metaphorically. He tried to</p> <p>2 screw me.</p> <p>3 Q. So -- and I just want to be clear on this.</p> <p>4 When Rob Cicero -- Cicero told you that he had spoken</p> <p>5 with Larry Flatley, right?</p> <p>6 A. Yes.</p> <p>7 Q. And he told you that he had spoken to him</p> <p>8 in connection with his, Rob Cicero's, investigation,</p> <p>9 right?</p> <p>10 A. He said he talked to him in regards to my</p> <p>11 allegations.</p> <p>12 Q. Um-hmm. But did he -- did he tell you that</p> <p>13 he had revealed to Mr. Flatley what your allegations</p> <p>14 were?</p> <p>15 A. Yes.</p> <p>16 Q. And what did he tell you; what did</p> <p>17 Mr. Cicero tell you that he had told Mr. Flatley?</p> <p>18 A. Everything.</p> <p>19 Q. The word "everything" came out of his</p> <p>20 mouth?</p> <p>21 A. No, I don't know -- the inference was I</p> <p>22 told him everything. He said I had to -- everything</p> <p>23 that I investigated was what the inference was. He</p> <p>24 said, I had to ask him about the things that you</p> <p>25 said. That's part of what I do when I investigate.</p>	<p style="text-align: right;">459</p> <p>1 All I know is they told me that they did tell him.</p> <p>2 Q. So with respect to Ms. Glica, do you have</p> <p>3 any reason to believe that she told Mr. Larry Flatley</p> <p>4 about your concerns?</p> <p>5 A. I don't have specific reasons to believe</p> <p>6 that she had, but I -- like I said, I -- I've been</p> <p>7 told after the fact that he was told. So how that</p> <p>8 information got to him, I have no view of that.</p> <p>9 Q. Do you have any reason to believe that</p> <p>10 Kathy Salvador told Mr. Flatley about your concerns?</p> <p>11 A. Mr. Flatley was told nos. These are the</p> <p>12 people that I gave the information to, so I guess</p> <p>13 that would constitute a reason to believe they may</p> <p>14 have.</p> <p>15 Q. Now, you said you were told that he,</p> <p>16 Mr. Flatley, was made aware of your concerns. Who</p> <p>17 told you that?</p> <p>18 A. Mr. Cicero.</p> <p>19 Q. Anyone else?</p> <p>20 A. No, I believe that was it.</p> <p>21 Q. Okay. Now, you had mentioned Ms. Bruce.</p> <p>22 And I know there is an email where you claim that she</p> <p>23 was going to tell Mr. Flatley, right?</p> <p>24 A. Yes.</p> <p>25 Q. And you objected to that, correct?</p>
<p style="text-align: right;">458</p> <p>1 So that -- the inference or my</p> <p>2 understanding was everything that I told him was</p> <p>3 purview to be then investigated and asked of Larry</p> <p>4 Flatley.</p> <p>5 So that wasn't what I was told when I made</p> <p>6 those submissions to Mr. Cicero. And what he did was</p> <p>7 spoil any possibility of a good relationship between</p> <p>8 me and Mr. Flatley. The same as -- I've stated the</p> <p>9 exact same thing in email form to Ms. Bruce when I</p> <p>10 told her that if she continued and told Mr. Flatley</p> <p>11 that it would poison my situation with him and that</p> <p>12 my -- my good per -- I was hoping that my good</p> <p>13 performance over time would -- would win that</p> <p>14 relationship. And if Larry was exonerated of any</p> <p>15 wrongdoing that it would forever poison my</p> <p>16 relationship with him even if he was exonerated.</p> <p>17 So I asked her not to do so and even made</p> <p>18 -- mentioned safety of my family. They disregarded</p> <p>19 that and told him anyways. I have no clue of when</p> <p>20 they told Mr. Flatley. All I know is I made</p> <p>21 submissions to Ms. Glica and Ms. Salvador, and then I</p> <p>22 got retaliated. Later on, I'm told that Mr. Flatley</p> <p>23 was made aware of my submissions, and then now I'm</p> <p>24 receiving retaliation because of it.</p> <p>25 So I have no clue when they told Larry.</p>	<p style="text-align: right;">460</p> <p>1 A. Yes.</p> <p>2 Q. And do you know whether she told</p> <p>3 Mr. Flatley after you objected?</p> <p>4 A. I was told by Mr. Cicero she had.</p> <p>5 Q. And what did he say about that?</p> <p>6 A. Just when he told me that he had talked to</p> <p>7 Larry in the course of the investigation that he --</p> <p>8 he said he believed that -- I asked him directly</p> <p>9 whether she had, and he said he believed she had.</p> <p>10 Q. And did Ms. Bruce ever say that she had</p> <p>11 spoken with Mr. -- Mr. Flatley?</p> <p>12 A. I'd only spoken with Ms. Bruce a couple of</p> <p>13 times, and so there would have been no conversation</p> <p>14 whereby that took place. When I spoke to her,</p> <p>15 somebody was -- I never spoke to her privately where</p> <p>16 no one else was there.</p> <p>17 Q. Other than the documents and witnesses</p> <p>18 you've already described, are there any additional</p> <p>19 witnesses or exhibits that you claim support your</p> <p>20 contention that you were retaliated against in</p> <p>21 connection with your June 2014 performance</p> <p>22 evaluation?</p> <p>23 A. Yeah, I --</p> <p>24 MR. LEE: Objection to the -- wait.</p> <p>25 Objection to the form -- objection to the form of</p>

<p style="text-align: right;">461</p> <p>1 the question. Asked and answered. But you can</p> <p>2 answer it.</p> <p>3 <b>A. I -- I believe there are thousands of</b></p> <p>4 <b>documents that are in -- are in the exhibit here that</b></p> <p>5 <b>say exactly what you just asked. So, yes, there are</b></p> <p>6 <b>many, many, many examples that would lead someone to</b></p> <p>7 <b>believe there was retaliation on me for my</b></p> <p>8 <b>submissions.</b></p> <p>9 Q. And sitting here today, do you remember any</p> <p>10 particular document that relates to the June 2014</p> <p>11 evaluation?</p> <p>12 MR. LEE: Objection to the form of the</p> <p>13 question.</p> <p>14 BY MS. BETRAM:</p> <p>15 Q. Let me restate the question because --</p> <p>16 MR. LEE: Okay.</p> <p>17 BY MS. BETRAM:</p> <p>18 Q. -- I think it was incomplete.</p> <p>19 Are you aware of any exhibits or witnesses</p> <p>20 that in particular support your contention that you</p> <p>21 were retaliated against in connection with your</p> <p>22 June 2014 performance evaluation?</p> <p>23 MR. LEE: Objection to the form of the</p> <p>24 question. Asked and answered. But you could</p> <p>25 answer.</p>	<p style="text-align: right;">463</p> <p>1 Q. What do you mean?</p> <p>2 <b>A. And so that document would absolutely make</b></p> <p>3 <b>it clear that I'm being retaliated against in part</b></p> <p>4 <b>because of that.</b></p> <p>5 Q. Which document are -- are you referring to</p> <p>6 of Ms. Bruce?</p> <p>7 <b>A. The termination letter. She mentions my</b></p> <p>8 <b>submissions. And -- and if that is even part of the</b></p> <p>9 <b>reason for my termination, then it shows that -- that</b></p> <p>10 <b>there's term -- that I was terminated in part because</b></p> <p>11 <b>of making my submissions. That is not correct. I</b></p> <p>12 <b>shouldn't be held whether it's even one-tenth or one</b></p> <p>13 <b>one-thousandth of the reason I was let go because it</b></p> <p>14 <b>then begs the question that if that wasn't, was that</b></p> <p>15 <b>the last straw that broke the camel's back or was it</b></p> <p>16 <b>99 percent of why I'm being --</b></p> <p>17 <b>I don't care which it is. All I know is</b></p> <p>18 <b>because she mentioned it in my termination, it means</b></p> <p>19 <b>it was part of the consideration that I was let go.</b></p> <p>20 <b>So that document does definitively, in my mind, say I</b></p> <p>21 <b>was retaliated against for making submissions of</b></p> <p>22 <b>fraud that went on at Smith &amp; Wesson.</b></p> <p>23 Q. Do you contend that you were retaliated</p> <p>24 against by being denied a bonus?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">462</p> <p>1 <b>A. The question is am I aware of them? Yes,</b></p> <p>2 <b>and I've enumerated them in the last response.</b></p> <p>3 Q. So you can't identify any particular</p> <p>4 document that relates to your contention that you</p> <p>5 were retaliated against in connection with your</p> <p>6 June 2014 performance evaluation?</p> <p>7 MR. LEE: Same objection.</p> <p>8 <b>A. There are many documents that point to the</b></p> <p>9 <b>fact that I pointed out eight factual errors in that</b></p> <p>10 <b>review. And when I was -- had a face-to-face meeting</b></p> <p>11 <b>with the individuals, I was told I -- I only can</b></p> <p>12 <b>discuss one. So if -- I would just say if anyone had</b></p> <p>13 <b>eight things said about them that they could prove to</b></p> <p>14 <b>be false and you're -- you're going to only let them</b></p> <p>15 <b>bring up one, and then at the -- the conclusion of</b></p> <p>16 <b>you bringing up the one, they said, We're going to</b></p> <p>17 <b>sign and affirm this evaluation, I don't believe</b></p> <p>18 <b>there is any other way to see that as a form of</b></p> <p>19 <b>retaliation against me based on my submissions to</b></p> <p>20 <b>that company.</b></p> <p>21 <b>And the document that Ms. Bruce sent to me</b></p> <p>22 <b>of my termination where she mentions my -- my</b></p> <p>23 <b>submissions to them over the months as -- in that</b></p> <p>24 <b>document, she mentions it and makes it part and</b></p> <p>25 <b>parcel of my termination.</b></p>	<p style="text-align: right;">464</p> <p>1 Q. Who retaliated against you in connection</p> <p>2 with denying you a bonus?</p> <p>3 <b>A. First of all, I know that -- I don't know</b></p> <p>4 <b>who made the decision, but I do know that I got a</b></p> <p>5 <b>call from Carl Hynes when I was at my doctor telling</b></p> <p>6 <b>me that he was at a meeting with Larry Flatley, and</b></p> <p>7 <b>that Larry Flatley was bragging that he kept my bonus</b></p> <p>8 <b>among other things.</b></p> <p>9 <b>And the purpose for his call was he told me</b></p> <p>10 <b>to get a lawyer and never come back to work at Smith</b></p> <p>11 <b>&amp; Wesson was his suggestion. He actually even said,</b></p> <p>12 <b>If you don't know a lawyer, I will provide you a name</b></p> <p>13 <b>of my attorney; he's good.</b></p> <p>14 <b>So even the people at -- at Pioneer felt</b></p> <p>15 <b>my -- my -- that I was retaliated against at Smith &amp;</b></p> <p>16 <b>Wesson and was actually encouraging me to get an</b></p> <p>17 <b>attorney because the things that we had heard from</b></p> <p>18 <b>Larry today, which he didn't enumerate. All he did</b></p> <p>19 <b>was say that Larry was bragging about keeping my</b></p> <p>20 <b>bonus among other things, that I needed to get out of</b></p> <p>21 <b>Smith &amp; Wesson; it wasn't good for me there.</b></p> <p>22 <b>So that led me to believe I was retaliated</b></p> <p>23 <b>against and that someone had kept my bonus as part of</b></p> <p>24 <b>retaliation.</b></p> <p>25 Q. And did you report Mr. Hynes' statement to</p>

<p style="text-align: right;">465</p> <p>1 Ed Suraci, Rob Cicero, or anybody else at Smith &amp; Wesson?</p> <p>2</p> <p>3 <b>A. I did.</b></p> <p>4 Q. To whom did you report it?</p> <p>5 <b>A. Mr. Cicero.</b></p> <p>6 Q. And do you know what Mr. Cicero did to</p> <p>7 review your concern with respect to Mr. Hynes?</p> <p>8 <b>A. I knew what he said.</b></p> <p>9 Q. And what did Mr. Cicero say?</p> <p>10 <b>A. He said, I cannot believe that someone from</b></p> <p>11 <b>Pioneer would do that. I just don't believe it.</b></p> <p>12 Q. And did Mr. Cicero say anything else in</p> <p>13 response?</p> <p>14 <b>A. No.</b></p> <p>15 Q. And do you know what Mr. Cicero did to look</p> <p>16 into your concern about what Mr. Hynes had said?</p> <p>17 <b>A. I know I never got the bonus.</b></p> <p>18 Q. Do you what Mr. Cicero did to look into</p> <p>19 your concern about what Mr. Hynes said to you?</p> <p>20 <b>A. No, I do not.</b></p> <p>21 Q. Do you know what conclusions he reached in</p> <p>22 connection with his investigation concerning the</p> <p>23 statement that Mr. Hynes made to you?</p> <p>24 <b>A. He did not mention it in his investigation</b></p> <p>25 <b>conclusions.</b></p>	<p style="text-align: right;">467</p> <p>1 as a consequence of -- well, because you complained</p> <p>2 about Pioneer?</p> <p>3 THE COURT REPORTER: Complained about what?</p> <p>4 MS. BETRAM: Let me restate the question</p> <p>5 because I got an email while I was talking and --</p> <p>6 and I -- I think I may have missed a word.</p> <p>7 BY MS. BETRAM:</p> <p>8 Q. So do you contend that you were denied a</p> <p>9 raise because you complained about Pioneer Tools?</p> <p>10 MR. LEE: Object to the form of the</p> <p>11 question, but you -- you may answer if you can.</p> <p>12 <b>A. I'm going to an -- answer this in a little</b></p> <p>13 <b>bit roundabout way that they told us -- Ms. Bruce</b></p> <p>14 <b>told every salaried employee that heretofore raises</b></p> <p>15 <b>-- there will be no more merit raises, but the raises</b></p> <p>16 <b>will take place on certain schedules and that you'd</b></p> <p>17 <b>be paid according to what your job is paid throughout</b></p> <p>18 <b>the -- throughout the country.</b></p> <p>19 <b>So that raise was part of the new policy.</b></p> <p>20 <b>At this point, as long as you got a good review, you</b></p> <p>21 <b>would get a raise at that time. And there was also</b></p> <p>22 <b>part and parcel of that agreement with the employees</b></p> <p>23 <b>that if you're salary, you would get a bonus based on</b></p> <p>24 <b>company figures and, you know, so that you were</b></p> <p>25 <b>eligible for the raise up to five percent.</b></p>
<p style="text-align: right;">466</p> <p>1 Q. And can you point to any other witnesses or</p> <p>2 evidence that support your contention that you were</p> <p>3 retaliated against in connection with the denial of a</p> <p>4 bonus by Smith &amp; Wesson?</p> <p>5 MR. LEE: Objection to the --</p> <p>6 <b>A. Uh --</b></p> <p>7 MR. LEE: Objection to the form of the</p> <p>8 question. Subject to the objection, you can</p> <p>9 answer if you can.</p> <p>10 <b>A. In discovery, there was a memo to Ms. Bruce</b></p> <p>11 <b>asking her if she had informed me that my bonus had</b></p> <p>12 <b>been kept. And I had not ever received such</b></p> <p>13 <b>notification.</b></p> <p>14 <b>So it implied that it was a topic of</b></p> <p>15 <b>discussion amongst Ann Bruce and someone else at</b></p> <p>16 <b>Smith &amp; Wesson about my bonus, which would lead me to</b></p> <p>17 <b>believe that it was part and parcel of -- of my --</b></p> <p>18 <b>the retaliation against me for submitting things</b></p> <p>19 <b>about a fraud that was going on at Smith &amp; Wesson.</b></p> <p>20 Q. Anything else that you can point to in</p> <p>21 terms of witnesses or documents that support your</p> <p>22 contention that your denial of a bonus was</p> <p>23 retaliatory?</p> <p>24 <b>A. Nothing I can point to document-wise, no.</b></p> <p>25 Q. Do you contend that you were denied a raise</p>	<p style="text-align: right;">468</p> <p>1 <b>So that was a record year that should have</b></p> <p>2 <b>been and was a five percent bonus given to all</b></p> <p>3 <b>employees. And I was excluded from the raise and the</b></p> <p>4 <b>bonus. The only reason I was given was it -- not --</b></p> <p>5 <b>it wasn't direct. All I knew was I was given a</b></p> <p>6 <b>fraudulent review that had eight false statements in</b></p> <p>7 <b>it. I wasn't able to refute them because I wasn't</b></p> <p>8 <b>given the opportunity. And because of that, I lost</b></p> <p>9 <b>out on the raise and the bonus.</b></p> <p>10 <b>So they can tell me why I didn't -- my</b></p> <p>11 <b>performance was above others in my department, and I</b></p> <p>12 <b>was discriminated unfairly and not even allowed to</b></p> <p>13 <b>address all eight reasons why that -- that review was</b></p> <p>14 <b>not factual.</b></p> <p>15 Q. Were you eventually -- did you eventually</p> <p>16 receive a raise in 2014?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Did you receive a raise in 2013?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Okay. And when was your raise in 2013?</p> <p>21 <b>A. It was supposed to take place in July, and</b></p> <p>22 <b>that would constitute another time that I went to</b></p> <p>23 <b>Ms. Glica and Ms. Salvador to -- to ask why I had</b></p> <p>24 <b>been -- not gotten it. And I got a -- either a call</b></p> <p>25 <b>or an email back from Kathy Salvador saying that</b></p>

<p style="text-align: right;">469</p> <p>1 it -- it was on Larry's desk. He hadn't signed it.  2 But you will have the raise in your next check.  3 So going to them, they followed through,  4 and I got it. So whether it was an oversight or  5 whether it was part and parcel of the retaliation  6 that was taking place, I cannot say from my view.  7 All I know is I didn't have it, I went to them, and  8 then I got it.  9 Q. Do you contend that that 2013 raise was  10 retaliatory?  11 A. I believe that the fact that I didn't get  12 it when everyone else got it could have been  13 retaliate -- retaliation.  14 Q. And why do you think that?  15 A. When everyone else gets a raise but you  16 don't, and the only difference between me and them  17 was I made a submission and they didn't, that led me  18 to believe that.  19 Q. And what submission had you made by July of  20 2013?  21 A. I had told Kathy Salvador by that time of  22 what transpired at the barbecue and that there were  23 different things that took place that led me to  24 believe that purchases were being directed unfairly  25 to the vendors.</p>	<p style="text-align: right;">471</p> <p>1 was responsible for putting me on leave would be the  2 one responsible for the retaliation. But since I  3 don't know the first person, I don't know the answer  4 to the second person either. Whoever was responsible  5 for putting me on leave was guilty of retaliating  6 against me for having made the submission, but I  7 don't know the -- who that individual was.  8 Q. What leads you to believe that the decision  9 to place you on leave was retaliatory?  10 A. Because --  11 MR. LEE: Objection -- objection to the  12 form of the question, but you may answer if you  13 can.  14 A. Because I was told that it was -- by  15 Mr. Cicero that I was being put on leave for my  16 safety, and then after being on there for three  17 months, nearly three months, I talked to an attorney,  18 and my attorney believed that Smith &amp; Wesson was  19 simply trying to run out the clock, as it were,  20 because there was a statute of limitations on  21 Sarbanes submissions. And that I believed that my  22 time on paid leave was a way for Smith &amp; Wesson to  23 simply beat the clock and run out my time of -- you  24 know, statutory time for my submissions so that they  25 could do -- it'd be a legal thing but avoid breaking</p>
<p style="text-align: right;">470</p> <p>1 Q. Do you contend that you were ever subjected  2 to discipline at Smith &amp; Wesson?  3 MR. LEE: Objection to the form of the  4 question. Ever? Or just at a particular time  5 or -- objection to the form of the question.  6 BY MS. BETRAM:  7 Q. Were you ever given -- is it your position  8 that you were given discipline while you were  9 employed at Smith &amp; Wesson?  10 A. Not that I can think of, no.  11 Q. Now, I know that you were placed on leave,  12 it sounds like in July of 2014. Do you know who made  13 the decision to place you on leave?  14 A. No, I don't.  15 Q. And is it your contention that that  16 decision was retaliatory?  17 A. Yes.  18 Q. And who do you contend retaliated against  19 you in connection with the decision to place you on  20 leave?  21 A. I think that --  22 MR. LEE: Object -- objection to the form  23 of the question, but you could -- calls for  24 speculation, but you can answer.  25 A. I think the person whoever it would be that</p>	<p style="text-align: right;">472</p> <p>1 the law.  2 Q. Now, I understand that your -- your  3 attorney may have espoused that view. Are you aware  4 of any other evidence in terms of documents or  5 witnesses that support your view that Smith &amp; Wesson  6 was trying to run out the clock on your statute of  7 limitations by placing you on administrative leave?  8 MR. LEE: Objection to the form of the  9 question. And if your belief comes from any  10 discussions you had with your lawyer, I'm going  11 to direct you not to answer that question.  12 MS. BETRAM: I'm asking for him -- his  13 beliefs other than what his counsel may have told  14 him.  15 MR. LEE: Okay. That's fair.  16 THE DEPONENT: I believe that I did look at  17 things online that seemed to confirm that  18 opinion.  19 BY MS. BETRAM:  20 Q. And what did you look at online that  21 supported that view?  22 A. Six years later, I have no clue what, but I  23 know at that time, I -- I felt that my -- those  24 documents that I read would -- seemed to indicate  25 that I was being singled out over my colleagues at</p>



<p style="text-align: right;">473</p> <p>1 work simply because I was the only one that made</p> <p>2 submissions. I was the only one placed on leave, and</p> <p>3 the only differentiation I could find between me and</p> <p>4 them was I had told them that my boss might have been</p> <p>5 involved in fraud in my company.</p> <p>6 Q. And the documents you're referring to are</p> <p>7 the things that you looked at online which you can't</p> <p>8 recall now?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you offer any other witnesses or</p> <p>11 documents that support your view that you were placed</p> <p>12 on leave because you reported fraud on the part of</p> <p>13 Smith &amp; Wesson?</p> <p>14 A. No.</p> <p>15 MR. LEE: Objection -- objection to the</p> <p>16 form of the question. Misstates the witness's</p> <p>17 prior testimony, but you may answer if you can.</p> <p>18 MS. BETRAM: He answered.</p> <p>19 A. I'm -- I'm unaware of any -- anything else</p> <p>20 other than what was already mentioned or mentioned by</p> <p>21 my attorney.</p> <p>22 Q. And you do contend that you were retaliated</p> <p>23 against because you reported what you considered to</p> <p>24 be fraudulent conduct at Smith &amp; Wesson, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">475</p> <p>1 termination decision.</p> <p>2 MR. LEE: Objection to the form of the</p> <p>3 question, but you may answer if you can.</p> <p>4 A. I was singled out over every other employee</p> <p>5 on a number of points, and the only difference that I</p> <p>6 could be -- I could deduce in my head was that I had</p> <p>7 made a submission and they hadn't.</p> <p>8 Q. Anything else?</p> <p>9 A. No, other than the thousands of documents</p> <p>10 we have.</p> <p>11 Q. Did anyone ever tell you that you were</p> <p>12 terminated because you raised concerns about Pioneer</p> <p>13 Tool?</p> <p>14 A. I told you the only communications about</p> <p>15 reasons for termination that were given to me by the</p> <p>16 company was contained in that termination letter. So</p> <p>17 the answer would be that letter never mentioned</p> <p>18 Pioneer Tools, so they didn't tell me that.</p> <p>19 Q. Now, you said that you felt that you had</p> <p>20 been singled out on a number of points. What points</p> <p>21 are you referring to?</p> <p>22 MR. LEE: Objection to the form --</p> <p>23 A. I --</p> <p>24 MR. LEE: Objection to the form of the</p> <p>25 question, but you may answer if you can.</p>
<p style="text-align: right;">474</p> <p>1 Q. And who do you contend -- do you know who</p> <p>2 made the termination decision? Let me strike that</p> <p>3 and start over.</p> <p>4 Do you know who made the decision to</p> <p>5 terminate you?</p> <p>6 A. No.</p> <p>7 Q. And do you know the basis for their</p> <p>8 decision to terminate you?</p> <p>9 A. If I take my -- the letter of termination</p> <p>10 from Anne -- Anne Bruce to be factual, then it was</p> <p>11 partially because I made submissions and partially</p> <p>12 because of the other things that she mentions in</p> <p>13 that -- that letter.</p> <p>14 Q. But other than what you read in that</p> <p>15 letter, you don't know why the company terminated</p> <p>16 you, right?</p> <p>17 A. No, that was -- that was their</p> <p>18 communication to me of why I was let go. But even in</p> <p>19 that, it lists my submissions.</p> <p>20 Q. Who do you contend retaliated against you</p> <p>21 by making the termination decision?</p> <p>22 A. I don't know who made it, so I wouldn't</p> <p>23 know that.</p> <p>24 Q. And what's the basis for your belief that</p> <p>25 you were retaliated against in connection with the</p>	<p style="text-align: right;">476</p> <p>1 A. I was told by the plant manager, Dan</p> <p>2 Fontaine, that I was no longer allowed to seek help</p> <p>3 from HR and that any problem I had, I needed to take</p> <p>4 it to Mr. Flatley. I asked him, What if the problem</p> <p>5 is a problem with Mr. Flatley? He said that still</p> <p>6 pertains, that you need to report it to Mr. Flatley.</p> <p>7 That is contrary to the employee handbook,</p> <p>8 everything that the company policy states regarding</p> <p>9 these things, and yet they did it anyways.</p> <p>10 I was also told that they didn't take</p> <p>11 away -- that raises wouldn't be given on a merit</p> <p>12 basis anymore. And after disciplining Mike Jurga at</p> <p>13 -- and was in agreement with Mr. Fontaine, he told me</p> <p>14 I should write him up. His write-up was rescinded.</p> <p>15 I was never talked to. And they offhand -- not only</p> <p>16 did they rescind his write-up for being insubordinate</p> <p>17 to me, they gave him a raise. I was asked who did</p> <p>18 this, and they told me it was -- it was Mr. Flatley</p> <p>19 that did so.</p> <p>20 So my deduction is based on what Mr. Suraci</p> <p>21 said that I -- he was poisoning my people and using</p> <p>22 them against me, that he had urged Mr. Jurga to be</p> <p>23 insubordinate with me, and when he did so, he made</p> <p>24 sure that he didn't get a write-up in his personnel</p> <p>25 file and ended up getting a raise for having been</p>

Baker, Earl Donald - Vol. II

September 25, 2020

59 (Pages 477 to 480)

<p style="text-align: right;">477</p> <p>1 insubordinate to his boss.</p> <p>2 That, to me, is different than any other</p> <p>3 person in the -- the plant, as is telling them they</p> <p>4 can't go to HR.</p> <p>5 And I had a different standard as far as my</p> <p>6 pitch board. I was told it was the best in the</p> <p>7 plant, and they were -- they talked to me about one</p> <p>8 incident where I was three days late on my -- my</p> <p>9 board, but yet they audited that board on a level</p> <p>10 that was different than everyone else in the company.</p> <p>11 But even though they did check it every day, they</p> <p>12 never found another error of that board, yet they</p> <p>13 still mentioned that thing as being like I had a</p> <p>14 deficiency on my board.</p> <p>15 So I don't care which way you look at it.</p> <p>16 There were a number of ways that I was discriminated</p> <p>17 and treated different than every other employee at</p> <p>18 Smith &amp; Wesson. And the only difference that I can</p> <p>19 deduce of why that occurred to me and not other</p> <p>20 people was I was the one that -- that brought these</p> <p>21 submissions to them and told them that I believe</p> <p>22 fraud to be going on in that company.</p> <p>23 Q. And were you singled out on any other</p> <p>24 points in your view?</p> <p>25 MR. LEE: Objection to the form of the</p>	<p style="text-align: right;">479</p> <p>1 me and Mr. Flatley. They said, yes, you bring that</p> <p>2 up to Mr. Flatley.</p> <p>3 Q. And did they explain why you should not go</p> <p>4 to HR anymore with issues?</p> <p>5 A. They didn't give a reason for it. It was</p> <p>6 just a direct order.</p> <p>7 MS. BETRAM: This would be a good spot for</p> <p>8 a break because I'm about to go into another</p> <p>9 topic.</p> <p>10 MR. LEE: Fair enough.</p> <p>11 THE VIDEOGRAPHER: Going off the record at</p> <p>12 4:47 P.M.</p> <p>13 (A break was had.)</p> <p>14 THE VIDEOGRAPHER: Back on the record at</p> <p>15 5:03 P.M.</p> <p>16 MS. BERTRAM: While we were off the record,</p> <p>17 counsel discussed the continuation of Mr. Baker's</p> <p>18 deposition. We agreed to work together in order</p> <p>19 to reduce the burden as much as possible on</p> <p>20 Mr. Baker trying to find a time after hours or</p> <p>21 perhaps on the weekends to resume his deposition</p> <p>22 so he doesn't have to take -- so he -- so -- to</p> <p>23 reduce the impact on him and his work.</p> <p>24 We can go off the record.</p> <p>25 MR. LEE: Okay. That's fine.</p>
<p style="text-align: right;">478</p> <p>1 question, but you may answer if you can.</p> <p>2 A. No, just general everyday courtesies that</p> <p>3 on a daily basis, they don't treat you the same. So</p> <p>4 there are probably more than I can bring to mind</p> <p>5 right now, and I'm sure I'll think of some later, but</p> <p>6 I think what I -- I have said is indicative of the</p> <p>7 type of treatment that I got that was different.</p> <p>8 Q. Now, you said that you were told by Dan</p> <p>9 Fontaine that you were no longer allowed to seek</p> <p>10 assistance from HR. When did he say that to you?</p> <p>11 A. That would have been a February meeting</p> <p>12 where Mr. Suraci was -- was out of the plant.</p> <p>13 Mr. Flatley said, Come with me, took me over to Dan's</p> <p>14 office, and we had a discussion. In that discussion,</p> <p>15 I was told I was not allowed to seek any more HR</p> <p>16 assistance in this matter and I had to take all</p> <p>17 things up with Mr. Flatley.</p> <p>18 Q. And was anybody else present other than</p> <p>19 you, Mr. Flatley, and Mr. Fontaine?</p> <p>20 A. No.</p> <p>21 Q. And did they -- did they say that's with</p> <p>22 respect to your performance issues or with respect to</p> <p>23 any issue?</p> <p>24 A. With respect to any issue because I even</p> <p>25 asked what if I have a problem with something between</p>	<p style="text-align: right;">480</p> <p>1 THE VIDEOGRAPHER: Going off the record at</p> <p>2 5:04 P.M.</p> <p>3 (A discussion was held off the record.)</p> <p>4 MR. LEE: I don't need it expedited. I'll</p> <p>5 take a copy regular.</p> <p>6 MS. BETRAM: We'll do it expedited.</p> <p>7 (SIGNATURE RESERVED.)</p> <p>8 (THE DEPOSITION ADJOURNED AT 5:04 P.M.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Baker, Earl Donald - Vol. II

September 25, 2020

60 (Pages 481 to 482)

<p style="text-align: right;">481</p> <p>1                   ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3                   I, _____, do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true, correct</p> <p>6 and complete transcription of the testimony given by</p> <p>7 me, and any corrections appear on the attached Errata</p> <p>8 Sheet signed by me.</p> <p>9</p> <p>10 _____</p> <p>11                   (DATE)                   (SIGNATURE)</p> <p>12</p> <p>13                   NOTARIZATION (If Required)</p> <p>14</p> <p>15 State of _____</p> <p>16 County of _____</p> <p>17</p> <p>18 Subscribed and sworn to (or affirmed) before me on</p> <p>19 this _____ day of _____, 20____, by</p> <p>20 _____, proved to me on the</p> <p>21 basis of satisfactory evidence to be the person who</p> <p>22 appeared before me.</p> <p>23</p> <p>24 Signature: _____</p> <p>25                   (Seal)</p>	
<p style="text-align: right;">482</p> <p>1                   CERTIFICATE OF REPORTER</p> <p>2 STATE OF NORTH CAROLINA )</p> <p>3 COUNTY OF WAKE            )</p> <p>4                   I, Eileen M. Dunne, the officer before whom</p> <p>5 the foregoing videotaped remote deposition was taken,</p> <p>6 located in Wake County, North Carolina at the time of</p> <p>7 deposition, do hereby certify that the witness whose</p> <p>8 testimony appears in the foregoing deposition was</p> <p>9 duly sworn by me via videoconference according to the</p> <p>10 emergency video notarization requirements contained</p> <p>11 in G.S. 10B-25; that the witness was located in</p> <p>12 Brunswick County at the time of deposition; that the</p> <p>13 testimony of said witness was taken by me to the best</p> <p>14 of my ability and thereafter reduced to typewriting</p> <p>15 under my direction; that I am neither counsel for,</p> <p>16 related to, nor employed by any of the parties to the</p> <p>17 action in which this deposition was taken, and</p> <p>18 further that I am not a relative or employee of any</p> <p>19 attorney or counsel employed by the parties thereto,</p> <p>20 nor financially or otherwise interested in the</p> <p>21 outcome of the action.</p> <p>22</p> <p>23 _____</p> <p>24 EILEEN M. DUNNE</p> <p>25 Notary Public # 201314900195</p>	

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

483

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(WESTERN DIVISION)

EARL DONALD BAKER,	)	
	)	Case No.
Plaintiff,	)	3:19-cv-30008-MGM
	)	
v.	)	
	)	Volume 3
SMITH & WESSON CORP.,	)	
	)	
Defendant.	)	
_____	)	

Videotaped Deposition of EARL DONALD BAKER

(Taken by Defendant)

Remotely

Saturday, October 10, 2020

Reported by: Cindy A. Hayden, RMR, CRR

Baker, Earl Donald - Vol. III

October 10, 2020

2 (Pages 484 to 487)

<p style="text-align: right;">484</p> <p style="text-align: center;">A P P E A R I N G</p> <p>1</p> <p>2</p> <p>3 ON BEHALF OF PLAINTIFF:</p> <p>4 JOHN YO-HWAN LEE, ESQ.</p> <p>5 Lee &amp; Breen, LLC</p> <p>6 188 Industrial Drive</p> <p>7 Suite 403</p> <p>8 Elmhurst, IL 60126</p> <p>9 312.241.1240</p> <p>10 jlee@leebreenlaw.com</p> <p>11</p> <p>12 ON BEHALF OF DEFENDANT:</p> <p>13 CONNIE N. BERTRAM, ESQ.</p> <p>14 Bertram Law LLP</p> <p>15 1717 K Street, NW</p> <p>16 Suite 900</p> <p>17 Washington, DC 20006</p> <p>18 703.627.1649</p> <p>19 cbertram@bertramllp.com</p> <p>20</p> <p>21 Also Present: Isaac Horner, Videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">486</p> <p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MS. BERTRAM 488</p> <p>4</p> <p>5 E X H I B I T S</p> <p>6</p> <p>7 (No newly proffered exhibits.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">485</p> <p style="text-align: center;">V I D E O T A P E D D E P O S I T I O N O F E A R L D O N A L D</p> <p>1</p> <p>2 BAKER, a witness called on behalf of Defendant,</p> <p>3 remotely, before Cindy A. Hayden, Notary Public, in</p> <p>4 and for the State of North Carolina, given</p> <p>5 remotely, on Saturday, October 10, 2020, commencing</p> <p>6 at 2:06 p.m.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">487</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1</p> <p>2 * * *</p> <p>3 THE VIDEOGRAPHER: Here begins 01:32:56</p> <p>4 Volume 3, Disc 1, in the video deposition of Earl 02:05:19</p> <p>5 Baker, taken in the matter of Earl Donald Baker v. 02:05:31</p> <p>6 Smith &amp; Wesson Corporation in the United States 02:05:35</p> <p>7 District Court for the District of Massachusetts, 02:05:43</p> <p>8 Western Division, Case Number 3:19-cv-30008-MGM. 02:05:44</p> <p>9 Today's date is October 10th, 2020, and 02:05:46</p> <p>10 the time on the video monitor is 2:06 p.m. Eastern 02:05:55</p> <p>11 Daylight Time. This deposition is being held 02:05:59</p> <p>12 remotely via videoconference. 02:06:04</p> <p>13 The court reporter is Cindy Hayden on 02:06:06</p> <p>14 behalf of Henderson Legal Services. The 02:06:08</p> <p>15 videocamera operator is Isaac Horner on behalf of 02:06:11</p> <p>16 Henderson Legal Services. 02:06:13</p> <p>17 Will counsel please introduce 02:06:19</p> <p>18 themselves and state whom they represent, beginning 02:06:20</p> <p>19 with the party noticing the deposition. 02:06:22</p> <p>20 MS. BERTRAM: Connie Bertram, counsel 02:06:24</p> <p>21 for Defendant Smith &amp; Wesson. 02:06:26</p> <p>22 MR. LEE: John Lee, L-E-E, counsel for 02:06:29</p> <p>23 Plaintiff Earl Baker. 02:06:33</p> <p>24 THE VIDEOGRAPHER: Will the court 02:06:34</p> <p>25 reporter please swear in the witness. 02:06:36</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald - Vol. III

October 10, 2020

3 (Pages 488 to 491)

<p style="text-align: right;">488</p> <p>1                   * * *</p> <p>2                   EARL DONALD BAKER,</p> <p>3                   having been first duly sworn, was examined and</p> <p>4                   testified as follows:</p> <p>5                   * * *</p> <p>6                   EXAMINATION</p> <p>7                   BY MS. BERTRAM:</p> <p>8                   Q. Welcome back, Mr. Baker. Again, I'm</p> <p>9                   Connie Bertram, and I represent Smith &amp; Wesson in</p> <p>10                  this case -- prior day of your deposition, you said</p> <p>11                  that you had mentioned Sarbanes-Oxley to HR</p> <p>12                  representatives of Smith &amp; Wesson when you raised</p> <p>13                  concerns about -- Flatley --</p> <p>14                  MR. LEE: Sorry to interrupt --</p> <p>15                  (Reporter clarification.)</p> <p>16                  (Off-the-record conference.)</p> <p>17                  BY MS. BERTRAM:</p> <p>18                  Q. Mr. Baker, again, I'm Connie Bertram,</p> <p>19                  and I represent the defendant, Smith &amp; Wesson, in</p> <p>20                  this case. During the prior day of your</p> <p>21                  deposition, you indicated that you had mentioned</p> <p>22                  Sarbanes-Oxley to HR representatives at Smith &amp;</p> <p>23                  Wesson. That occurred in -- in mid of 2013,</p> <p>24                  correct?</p> <p>25                  A. That's correct.</p>	<p style="text-align: right;">490</p> <p>1                   person that is -- you know, is talking about those</p> <p>2                   things.</p> <p>3                   So I felt -- you know, we had mentioned</p> <p>4                   the confidentiality in each of the meetings,</p> <p>5                   whether it was HR or Mr. Cicero, and I was assured</p> <p>6                   there would be confidentiality. But that's pretty</p> <p>7                   much the context of what I -- you know, what I told</p> <p>8                   them.</p> <p>9                   Q. Let me -- let me break this up a little</p> <p>10                  bit so that -- that your testimony is clear.</p> <p>11                  You indicated that you had mentioned</p> <p>12                  Sarbanes-Oxley to Kathy Salvador, correct?</p> <p>13                  A. Yes.</p> <p>14                  Q. What did you say to her specifically</p> <p>15                  concerning Sarbanes-Oxley?</p> <p>16                  A. Well, I basically said that there were</p> <p>17                  indications that things were going on, that there</p> <p>18                  were issues taking place that were not --</p> <p>19                  basically, decisions were being made within Smith &amp;</p> <p>20                  Wesson that weren't -- they weren't decisions made</p> <p>21                  in the best interests of Smith &amp; Wesson.</p> <p>22                  And I believe that to be part and</p> <p>23                  parcel of the fact that people were accepting gifts</p> <p>24                  that were not appropriate, based on what we had</p> <p>25                  gone through in -- both in the company policy and</p>
<p style="text-align: right;">489</p> <p>1                   Q. And do you recall the words that you</p> <p>2                   said to them about Sarbanes-Oxley?</p> <p>3                   A. Yes. I had referenced the LRN that I</p> <p>4                   had been asked to take as a member of Smith &amp;</p> <p>5                   Wesson. All salaried employees had to take a</p> <p>6                   course on whistle-blowing, and in there was where</p> <p>7                   I -- I learned what Sarbanes-Oxley was.</p> <p>8                   So since that was -- had taken place</p> <p>9                   basically concurrent with me going there, I</p> <p>10                  referenced Sarbanes-Oxley, the things in there,</p> <p>11                  and -- and why I believed the things that I</p> <p>12                  witnessed needed to be reported. And so it was --</p> <p>13                  it was mentioned in the context of comparison,</p> <p>14                  comparing it to the LRN.</p> <p>15                  Q. And you said that you gave reference to</p> <p>16                  the things in there. What -- what are you</p> <p>17                  referring to?</p> <p>18                  A. "In there," mentioned a number of</p> <p>19                  things, one being what was deemed to be an</p> <p>20                  appropriate gift, what was -- it used a term,</p> <p>21                  "nominal" thing was okay, and it quantified that</p> <p>22                  nominal value as being \$99.</p> <p>23                  It -- it mentioned what type of things</p> <p>24                  to -- were worthy of being reported, what the law</p> <p>25                  provides for and what the protections are for the</p>	<p style="text-align: right;">491</p> <p>1                   also in that -- that LRN course that we took.</p> <p>2                   Q. And did you use -- use the words</p> <p>3                   "Sarbanes-Oxley" when you spoke with Kathy</p> <p>4                   Salvador?</p> <p>5                   A. Yes. Yes.</p> <p>6                   Q. Okay. And what did you say</p> <p>7                   specifically about Sarbanes-Oxley?</p> <p>8                   A. Just what I just said, that -- that it</p> <p>9                   gave the scope of what things were considered to be</p> <p>10                  inappropriate actions that needed to be reported</p> <p>11                  and what things were not. And so based out of that</p> <p>12                  context, I told her issues that I felt needed to be</p> <p>13                  reported and looked into.</p> <p>14                  And I also mentioned that there were</p> <p>15                  gifts being given that were outside the scope of</p> <p>16                  what our company policy allowed and what was</p> <p>17                  reinforced with that LRN training, and that I felt</p> <p>18                  there was a definite quid pro quo between the two</p> <p>19                  in that it was mentioned to me that -- that there</p> <p>20                  was a connection between the gifts and how the</p> <p>21                  vendors were being treated.</p> <p>22                  So, to me, the -- the barbecues at</p> <p>23                  Pioneer was definitely a watershed mark for me in</p> <p>24                  that I was aware of transactions that took place</p> <p>25                  that weren't in the best interests of Smith &amp;</p>

<p style="text-align: right;">492</p> <p>1 Wesson. And there were gifts being given and 02:12:37</p> <p>2 received that weren't within the company policy, 02:12:42</p> <p>3 and that the statement that connected the two -- 02:12:46</p> <p>4 because I didn't actually see people receiving 02:12:49</p> <p>5 gifts. I heard, you know, a lot of different 02:12:52</p> <p>6 stories. But when Mr. Flatley told me that if I 02:12:57</p> <p>7 had shown up to that meeting and -- the barbecue 02:13:02</p> <p>8 and I was the highest-ranking Smith &amp; Wesson 02:13:06</p> <p>9 officer there on that given evening, that I would 02:13:10</p> <p>10 surely win something. 02:13:14</p> <p>11 And to me, that demonstrated a quid pro 02:13:15</p> <p>12 quo. And it gave context to all of the little 02:13:18</p> <p>13 things that were being done that weren't in the 02:13:22</p> <p>14 best interest of Smith &amp; Wesson, where we were -- 02:13:26</p> <p>15 we were losing money, not getting -- when a vendor 02:13:28</p> <p>16 did something incorrectly, we didn't -- we didn't 02:13:33</p> <p>17 ask for the credits back that we should have, and 02:13:38</p> <p>18 those things weren't proper. 02:13:42</p> <p>19 But like I said, that gave context to 02:13:44</p> <p>20 why that was happening in that I was told by my 02:13:47</p> <p>21 boss, a director that was just under a vice 02:13:51</p> <p>22 president that was telling me that there was a 02:13:58</p> <p>23 pay-to-play society going on at Smith &amp; Wesson with 02:14:00</p> <p>24 the vendors and that all I had to do was do certain 02:14:03</p> <p>25 things to be a part of that gift-giving system. 02:14:08</p>	<p style="text-align: right;">494</p> <p>1 then it did become a SOX claim. 02:15:52</p> <p>2 So, again, you know the legal aspects 02:15:56</p> <p>3 of it far better than I. It just showed to a 02:16:00</p> <p>4 novice, such as myself, which things are SOX-worthy 02:16:06</p> <p>5 and which things were not. 02:16:09</p> <p>6 And in this case, I pointed out to 02:16:11</p> <p>7 Kathy which things were Sarbanes-Oxley-related, and 02:16:13</p> <p>8 it just boiled down to a simple thing for me, is: 02:16:21</p> <p>9 These actions weren't right, and I reported them. 02:16:24</p> <p>10 And all I had to do was -- that LRN was -- just let 02:16:27</p> <p>11 me know that I was on the right track and I was 02:16:33</p> <p>12 doing the proper thing. 02:16:36</p> <p>13 Q. So it's -- it's your testimony that you 02:16:38</p> <p>14 thought that things were SOX-worthy -- 02:16:42</p> <p>15 MR. LEE: Objection. 02:16:42</p> <p>16 BY MS. BERTRAM: 02:16:42</p> <p>17 Q. -- based on the information -- the LRN 02:16:45</p> <p>18 training; is that right? 02:16:49</p> <p>19 A. Yes. 02:16:50</p> <p>20 Q. And you testified earlier that you also 02:16:50</p> <p>21 used the words "Sarbanes-Oxley" when you spoke with 02:16:55</p> <p>22 Ann Glica; is that right? 02:16:58</p> <p>23 A. Yes. 02:17:01</p> <p>24 Q. And those were during conversations 02:17:01</p> <p>25 also in mid-September of 2013, right? 02:17:03</p>
<p style="text-align: right;">493</p> <p>1 And that's what I told her. 02:14:11</p> <p>2 Q. And do you recall any sentence that you 02:14:15</p> <p>3 said to Kathy Salvador that included the words 02:14:19</p> <p>4 "Sarbanes-Oxley" in it? 02:14:24</p> <p>5 A. No. I -- I remember contextually what 02:14:25</p> <p>6 was said at that thing. But as far as, you know, 02:14:28</p> <p>7 remembering sentence for sentence over six years 02:14:34</p> <p>8 ago is a little bit hard to -- hard to say with 02:14:37</p> <p>9 certainty. I know in context what I said, but I 02:14:43</p> <p>10 cannot give you word for word of every sentence 02:14:47</p> <p>11 that was mentioned that had "Sarbanes-Oxley" in it. 02:14:51</p> <p>12 Q. You said in your testimony it 02:14:55</p> <p>13 identified what needs to be reported. 02:14:58</p> <p>14 A. Yes. 02:15:02</p> <p>15 Q. By "it," you mean the LRN, right? 02:15:02</p> <p>16 A. Yes. The LRN differentiated between 02:15:05</p> <p>17 simple gripes you had around the shop or things 02:15:10</p> <p>18 that you didn't -- didn't think were appropriate 02:15:15</p> <p>19 treatment of management to subordinates, didn't 02:15:19</p> <p>20 necessarily construe an action that was part of 02:15:25</p> <p>21 Sarbanes-Oxley. 02:15:31</p> <p>22 However, if those negative treatments 02:15:32</p> <p>23 of the employees were in connection with the fact 02:15:39</p> <p>24 that someone had -- had given information or was in 02:15:42</p> <p>25 an effort to suppress that type of information, 02:15:47</p>	<p style="text-align: right;">495</p> <p>1 A. Yes. Those were actually on the same 02:17:05</p> <p>2 day initially. At the time, they were in a 02:17:07</p> <p>3 trailer. So they were in just little cubicles 02:17:13</p> <p>4 adjoining one another. So once I had mentioned 02:17:17</p> <p>5 Sarbanes-Oxley to Ann, she felt that it might be 02:17:21</p> <p>6 wise to involve her boss, which was Kathy Salvador, 02:17:26</p> <p>7 in the conversation. So we wheeled our chairs from 02:17:29</p> <p>8 one cubical to the next, and we began talking to 02:17:34</p> <p>9 Kathy. 02:17:38</p> <p>10 Q. Did you say anything different to Ann 02:17:39</p> <p>11 Glica about Sarbanes-Oxley than what you've already 02:17:47</p> <p>12 described about your conversations with Kathy 02:17:50</p> <p>13 Salvador? 02:17:53</p> <p>14 A. As far as I recall, yes -- or, no, 02:17:54</p> <p>15 nothing different, but -- 02:17:56</p> <p>16 Q. Okay. 02:17:57</p> <p>17 A. -- but -- it was the same. 02:17:57</p> <p>18 Q. You indicated -- is it your testimony 02:17:59</p> <p>19 that you also had conversations with Ed Suraci 02:18:02</p> <p>20 about Sarbanes-Oxley? 02:18:06</p> <p>21 A. More than one occasion, yes. 02:18:08</p> <p>22 Q. Okay. And what did you say to 02:18:10</p> <p>23 Mr. Suraci about Sarbanes-Oxley? 02:18:13</p> <p>24 A. I first recounted my conversations with 02:18:18</p> <p>25 Ms. Glica, Ms. Salvador, and -- so that was the 02:18:22</p>

Baker, Earl Donald - Vol. III

October 10, 2020

5 (Pages 496 to 499)

496	498
<p>1 basis. So in recalling that conversation, of 02:18:26</p> <p>2 course, Sarbanes was -- was brought up. 02:18:30</p> <p>3 It was also brought up in the context 02:18:34</p> <p>4 of emails, and that after I was on paid leave, I 02:18:37</p> <p>5 kept getting calls from employees that -- that had 02:18:44</p> <p>6 worked -- you know, had been in my department that 02:18:47</p> <p>7 told me that Leo was being harassed and -- I'm not 02:18:52</p> <p>8 sure, other than harassed or bothered by 02:19:01</p> <p>9 Mr. Flatley. 02:19:06</p> <p>10 He had -- they had said that he had 02:19:09</p> <p>11 pointed at him as he walked across the floor and, 02:19:11</p> <p>12 using their words, said that he was pointing to 02:19:15</p> <p>13 them as if to say, "I'm going to get you," and that 02:19:20</p> <p>14 they got into a shouting match where vulgar 02:19:24</p> <p>15 language was being used on the floor openly in 02:19:29</p> <p>16 front of everybody else and that it related to what 02:19:32</p> <p>17 Leo had said regarding the -- the improper gifts 02:19:36</p> <p>18 that he saw in his account. He saw money being 02:19:42</p> <p>19 passed under Stanley Wnuk's door. 02:19:47</p> <p>20 And so I emailed Mr. Suraci right away 02:19:54</p> <p>21 and told him that I thought he was being harassed 02:19:58</p> <p>22 and that I told him that I felt like that the -- 02:20:01</p> <p>23 the harassment of Leo was SOX-worthy. I mentioned 02:20:08</p> <p>24 SOX because I mentioned something about the 30 -- 02:20:13</p> <p>25 third-party harassment around zone of influence; 02:20:17</p>	<p>1 mentioned Sarbanes-Oxley in an email while you were 02:21:33</p> <p>2 on administrative leave? 02:21:37</p> <p>3 A. Yes. 02:21:39</p> <p>4 Q. Do you recall any communications with 02:21:39</p> <p>5 Smith &amp; Wesson about -- where you mentioned 02:21:43</p> <p>6 Sarbanes-Oxley prior to that email? 02:21:46</p> <p>7 A. There -- 02:21:49</p> <p>8 MR. LEE: Objection to form of the 02:21:49</p> <p>9 question. Asked and answered. 02:21:50</p> <p>10 But you may answer. 02:21:52</p> <p>11 THE WITNESS: There are so many 02:21:53</p> <p>12 documents that -- that pertain to this case. Off 02:21:55</p> <p>13 the top of my head, I can't recall a specific one 02:21:59</p> <p>14 to tell you. I just know that -- that there are 02:22:01</p> <p>15 mentions of Sarbanes-Oxley throughout some of the 02:22:06</p> <p>16 emails. I -- I'd have to go through them to -- to 02:22:10</p> <p>17 get the specific ones. 02:22:14</p> <p>18 BY MS. BERTRAM: 02:22:15</p> <p>19 Q. Do you recall mentioning Sarbanes-Oxley 02:22:15</p> <p>20 in writing before you retained the Employment Law 02:22:18</p> <p>21 Group as your counsel? 02:22:21</p> <p>22 A. Yeah. That email to -- to Mr. Suraci 02:22:25</p> <p>23 would be one, for sure. And, again, I would have 02:22:27</p> <p>24 to -- to go through mentally and try and recall 02:22:32</p> <p>25 which other ones where I did mention 02:22:35</p>
497	499
<p>1 that, basically, I just quoted what I Googled 02:20:20</p> <p>2 online, but said that it wasn't right the way he 02:20:23</p> <p>3 was being treated just for having given information 02:20:25</p> <p>4 regarding fraud at Smith &amp; Wesson. And I felt like 02:20:29</p> <p>5 Mr. Flatley's treatment fell in the category of 02:20:33</p> <p>6 harassment for the purpose of -- of silencing him 02:20:37</p> <p>7 in a SOX submission. And so I not only tell 02:20:43</p> <p>8 Mr. Suraci that, but I mentioned in the email SOX. 02:20:50</p> <p>9 Q. And do you recall any specific 02:20:53</p> <p>10 statements that you made to Mr. Suraci about 02:20:57</p> <p>11 Sarbanes-Oxley, any specific sentences that you 02:21:01</p> <p>12 used? 02:21:06</p> <p>13 A. No. It's just recounting what I had 02:21:06</p> <p>14 told Ms. -- Ms. Glica and Salvador. 02:21:09</p> <p>15 MR. LEE: Sorry. Can you pause or at 02:21:14</p> <p>16 least slow down your answer, so that if I have an 02:21:18</p> <p>17 objection, I can jump in and make an objection? 02:21:20</p> <p>18 I'll just make a record of it? 02:21:22</p> <p>19 THE WITNESS: Absolutely. Sorry. 02:21:24</p> <p>20 MR. LEE: It wasn't your fault. I was 02:21:24</p> <p>21 trying to make an objection, and I realized I was 02:21:26</p> <p>22 on mute. 02:21:28</p> <p>23 THE WITNESS: Oh, okay. 02:21:30</p> <p>24 BY MS. BERTRAM: 02:21:31</p> <p>25 Q. And, Mr. Baker, you said that you 02:21:31</p>	<p>1 Sarbanes-Oxley. 02:22:39</p> <p>2 I know we -- we did discuss it with 02:22:40</p> <p>3 Mr. Cicero, in a meeting with Mr. Cicero, 02:22:43</p> <p>4 Mr. Suraci and myself, where we -- Smith -- SOX 02:22:47</p> <p>5 was -- was the primary focus in what we talked 02:22:54</p> <p>6 about. It was mentioned a number of times. 02:22:56</p> <p>7 Q. Right. But I was asking about written 02:22:58</p> <p>8 documents, written communications that you provided 02:22:59</p> <p>9 to the company. Can you recall any specific 02:23:02</p> <p>10 written communications prior to your -- your email 02:23:05</p> <p>11 regarding the DOJ where you referenced that 02:23:08</p> <p>12 statute? 02:23:12</p> <p>13 A. There may have been other ones. Again, 02:23:15</p> <p>14 it would be in that -- that email record that's out 02:23:17</p> <p>15 there that exists. And if that -- if we found an 02:23:21</p> <p>16 email in there, if it was a Smith &amp; Wesson email, 02:23:24</p> <p>17 that would have occurred prior to bringing on the 02:23:29</p> <p>18 Employment Law Group, because as soon as they put 02:23:33</p> <p>19 me on paid leave, they suspended my access to my 02:23:36</p> <p>20 email and the plant. 02:23:42</p> <p>21 Q. And I take it's your testimony that you 02:23:46</p> <p>22 also said to Rob Cicero that -- or made reference 02:23:49</p> <p>23 to -- to Sarbanes-Oxley in your conversations with 02:23:59</p> <p>24 Mr. Cicero; is that right? 02:24:02</p> <p>25 MR. LEE: Objection -- 02:24:04</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald - Vol. III

October 10, 2020

6 (Pages 500 to 503)

500	502
<p>1 THE WITNESS: Yes. 02:24:05</p> <p>2 MR. LEE: Objection to the form of the 02:24:05</p> <p>3 question. 02:24:07</p> <p>4 You've got to give me a chance to make 02:24:08</p> <p>5 my objection. Then you can answer. 02:24:10</p> <p>6 Objection to the form of the question. 02:24:11</p> <p>7 You may answer. 02:24:13</p> <p>8 BY MS. BERTRAM: 02:24:14</p> <p>9 Q. I'm going to restate the question 02:24:14</p> <p>10 because it -- 02:24:14</p> <p>11 MR. LEE: Yeah. 02:24:14</p> <p>12 BY MS. BERTRAM: 02:24:14</p> <p>13 Q. -- got a little jumbled anyway. 02:24:16</p> <p>14 MR. LEE: And, actually, you got -- you 02:24:18</p> <p>15 went, like, in and out a little bit, too. 02:24:19</p> <p>16 MS. BERTRAM: Okay. 02:24:21</p> <p>17 MR. LEE: I figured out what the 02:24:22</p> <p>18 question was, but -- 02:24:23</p> <p>19 BY MS. BERTRAM: 02:24:24</p> <p>20 Q. In your conversations with Mr. Cicero, 02:24:24</p> <p>21 did you make reference to Sarbanes-Oxley? 02:24:26</p> <p>22 A. Yes, we -- we mentioned it in a number 02:24:30</p> <p>23 of contexts. One of the reasons that comes -- one 02:24:35</p> <p>24 of the things that we mentioned at first was the 02:24:42</p> <p>25 fact that -- initially, I was talking to Mr. Suraci 02:24:45</p>	<p>1 Mr. Cicero set up a meeting. So initially, even 02:26:36</p> <p>2 the introductions while we were talking had to do 02:26:42</p> <p>3 with the fact that Mr. Cicero was brought in by 02:26:46</p> <p>4 Mr. Suraci for the express purpose that he believed 02:26:51</p> <p>5 it to be a SOX-worthy situation and that he felt it 02:26:56</p> <p>6 needed to be escalated just beyond you telling your 02:27:00</p> <p>7 supervisor and -- and/or management to -- you need 02:27:05</p> <p>8 to talk to somebody in legal because I think this 02:27:11</p> <p>9 is important. So initially, it started out talking 02:27:14</p> <p>10 about Sarbanes-Oxley. 02:27:17</p> <p>11 One other issue that I know for sure we 02:27:20</p> <p>12 discussed SOX in length was a conversation whereby 02:27:24</p> <p>13 Mr. Cicero had admitted that he had broken my 02:27:30</p> <p>14 confidentiality and told Mr. Flatley that I had 02:27:34</p> <p>15 implicated him in my submissions to him, 02:27:40</p> <p>16 Mr. Suraci, and HR. I was not happy with that 02:27:46</p> <p>17 because it violated what he had told me in our 02:27:50</p> <p>18 initial meeting. 02:27:53</p> <p>19 And I said that that was the reason I 02:27:56</p> <p>20 believe that my -- the harassment by Mr. Flatley 02:27:59</p> <p>21 escalated exponentially after that point and that I 02:28:04</p> <p>22 was angry with him for doing that. And he 02:28:08</p> <p>23 explained that it was part of his investigation, 02:28:12</p> <p>24 that he felt like it's too tough to investigate 02:28:17</p> <p>25 without having let Mr. Flatley know what I had told 02:28:23</p>
501	503
<p>1 about the -- the going-on relating to the 02:24:51</p> <p>2 harassment by Mr. Flatley. 02:24:54</p> <p>3 In doing so, we brought up -- I brought 02:24:58</p> <p>4 up the context that there was a reason why he was 02:25:03</p> <p>5 harassing me in that way and that I had been told 02:25:09</p> <p>6 by Mrs. -- Ms. Salvador not to mention the aspect 02:25:13</p> <p>7 relating to vendor gifts and vendor influence on 02:25:18</p> <p>8 the decisions being made and that that was a 02:25:25</p> <p>9 context that made a lot of what was going on 02:25:28</p> <p>10 between Mr. Flatley and myself -- it gave it 02:25:33</p> <p>11 context. 02:25:37</p> <p>12 So it was Mr. Suraci's view that this 02:25:37</p> <p>13 was serious. His exact words were: Where there's 02:25:44</p> <p>14 smoke, there's fire. And I'd say there's 02:25:49</p> <p>15 definitely smoke. If -- he asked whether or not it 02:25:51</p> <p>16 would be okay to escalate this to the next level 02:25:54</p> <p>17 and speak with someone at legal. 02:25:58</p> <p>18 Prior to that conversation, I had never 02:26:01</p> <p>19 heard of Mr. Cicero, and I told him it was okay. 02:26:05</p> <p>20 Mr. Suraci then escalated this to -- to be more of 02:26:11</p> <p>21 a formal claim with legal department. And up to 02:26:16</p> <p>22 that point, I had been just talking to HR. And in 02:26:21</p> <p>23 some cases, even, I spoke to Mr. Flatley about some 02:26:25</p> <p>24 of the issues, and Mr. Suraci. 02:26:29</p> <p>25 After he involved Mr. Cicero, 02:26:32</p>	<p>1 him. So he had told him. 02:28:25</p> <p>2 And I -- I asked him that -- you know, 02:28:27</p> <p>3 we discussed the fact that harassment under the 02:28:31</p> <p>4 guise of or for the express purpose of knocking me 02:28:34</p> <p>5 back because I've informed on some of the 02:28:41</p> <p>6 activities that I believed to be against the 02:28:45</p> <p>7 interest of the -- the shareholders, and fraud in 02:28:49</p> <p>8 some cases, that it was wrong for him to harass me, 02:28:51</p> <p>9 and that when he told him, all he did was make that 02:28:58</p> <p>10 grow. 02:29:01</p> <p>11 And he told me at that point that he 02:29:02</p> <p>12 was sure that Mr. Flatley wasn't harassing me 02:29:04</p> <p>13 because he had warned him and said that my 02:29:11</p> <p>14 submissions were made in good faith and with the 02:29:14</p> <p>15 interest of Smith &amp; Wesson in mind; and that 02:29:16</p> <p>16 because of this, he was assured that -- after 02:29:18</p> <p>17 admonishing Mr. Flatley of this, that he was 02:29:22</p> <p>18 assured by Mr. Flatley that no more harassment 02:29:25</p> <p>19 would take place because of it. 02:29:28</p> <p>20 But that whole explanation, that whole 02:29:30</p> <p>21 conversation was in the context of Sarbanes-Oxley 02:29:33</p> <p>22 and harassment due to me implicating him with some 02:29:38</p> <p>23 of the things I told them. 02:29:44</p> <p>24 MS. BERTRAM: John, I can't take a 02:29:48</p> <p>25 proper deposition in this situation. You're on 02:29:50</p>

Baker, Earl Donald - Vol. III

October 10, 2020

7 (Pages 504 to 507)

504	506
<p>1 mute, by the way. 02:29:53</p> <p>2 MR. LEE: Hold on. Hold on one second. 02:29:54</p> <p>3 Okay. Now I'm on. 02:29:57</p> <p>4 MS. BERTRAM: Right. I -- I can't take 02:29:59</p> <p>5 a proper deposition in this situation. 02:30:01</p> <p>6 MR. LEE: You're breaking up. 02:30:01</p> <p>7 MS. BERTRAM: I'm asking about -- 02:30:04</p> <p>8 MR. LEE: You're -- you're breaking up. 02:30:05</p> <p>9 You're breaking up. 02:30:06</p> <p>10 MS. BERTRAM: Okay. I'm -- I'm -- I 02:30:07</p> <p>11 honestly should not be in a situation where I can't 02:30:09</p> <p>12 take a proper deposition. Because I'm asking when 02:30:13</p> <p>13 something happened, and I get five minutes of 02:30:16</p> <p>14 testimony. And I'm sitting here, like, cutting 02:30:19</p> <p>15 topics out because we're not going to have time to 02:30:22</p> <p>16 cover them, and that's not fair to me or to my 02:30:24</p> <p>17 client. 02:30:27</p> <p>18 I'm going to take a break, and talk 02:30:29</p> <p>19 with Mr. Baker. I asked him what he said about 02:30:30</p> <p>20 Sarbanes-Oxley. You know, what did you -- what did 02:30:34</p> <p>21 you say that you -- you know, but I'm getting the 02:30:37</p> <p>22 same testimony I got before that's completely 02:30:40</p> <p>23 nonresponsive. 02:30:44</p> <p>24 And I -- I don't think it's fair after 02:30:46</p> <p>25 all this time in the litigation, all the 02:30:49</p>	<p>1 again, we'll take a break -- 02:31:54</p> <p>2 MS. BERTRAM: I mean, maybe Ed was 02:31:56</p> <p>3 providing a little context with a sentence or two. 02:31:57</p> <p>4 I'm pondering whether I need to go to the judge to 02:32:00</p> <p>5 get an order from the judge for him to respond to 02:32:03</p> <p>6 my questions. 02:32:06</p> <p>7 MR. LEE: He did respond to your 02:32:06</p> <p>8 question. If you want to go to the judge, go to 02:32:07</p> <p>9 the judge. I -- I -- 02:32:09</p> <p>10 MS. BERTRAM: Why don't you -- why 02:32:10</p> <p>11 don't you talk with him. The record is going to be 02:32:11</p> <p>12 clear. He's not -- 02:32:13</p> <p>13 Mr. Baker, this is not funny. This is 02:32:15</p> <p>14 a serious matter. You are under oath, and I just 02:32:17</p> <p>15 want to get answers to my questions. I've been 02:32:20</p> <p>16 waiting -- 02:32:23</p> <p>17 MR. LEE: He gave you -- 02:32:23</p> <p>18 MS. BERTRAM: -- six long years to ask 02:32:24</p> <p>19 these questions, and -- and I don't think -- 02:32:25</p> <p>20 MR. LEE: He gave you -- he gave you 02:32:26</p> <p>21 answers. He gave you answers to your question. 02:32:27</p> <p>22 And if you want to take a look at -- if you want to 02:32:30</p> <p>23 compare Suraci and -- and Baker, we can. But I 02:32:33</p> <p>24 don't -- and if you want to go to the judge, you 02:32:36</p> <p>25 can -- 02:32:39</p>
505	507
<p>1 preparation, taking time off on a Saturday 02:30:52</p> <p>2 afternoon to finish this deposition to sit here, 02:30:54</p> <p>3 listen to him say whatever he wants to say in 02:30:58</p> <p>4 response to my questions. And I can't cover entire 02:31:01</p> <p>5 topics because he provides 5-, 10-, and sometimes 02:31:05</p> <p>6 even 15-minute responses to simple yes-no 02:31:08</p> <p>7 questions, date questions; questions about, you 02:31:12</p> <p>8 know, what did you say about this topic in -- in 02:31:14</p> <p>9 it. 02:31:17</p> <p>10 And I -- and I -- you know, he seems to 02:31:18</p> <p>11 think that he has -- if he's talking about context, 02:31:20</p> <p>12 it gives him license to say whatever he wants to. 02:31:23</p> <p>13 He needs to respond to the question that's been 02:31:26</p> <p>14 asked. This is day, what, four? And I haven't 02:31:28</p> <p>15 covered entire topics. I've never seen this 02:31:31</p> <p>16 before. 02:31:34</p> <p>17 MR. LEE: I disagree with what you 02:31:35</p> <p>18 said. I thought he answered the question. Yeah, 02:31:36</p> <p>19 it was wordy, but he answered it. 02:31:39</p> <p>20 Now, do you want to take a break and 02:31:40</p> <p>21 you want me -- you want me to remind him to just 02:31:42</p> <p>22 answer the question and be more succinct about it, 02:31:44</p> <p>23 I'll do that. I've been doing that forever. 02:31:47</p> <p>24 But -- and I'm sure you did that with Suraci. In 02:31:49</p> <p>25 fact, you did it with Suraci on the record. But, 02:31:52</p>	<p>1 MS. BERTRAM: I want -- I want to get 02:32:39</p> <p>2 this solved. If I ask for a date, give me a date. 02:32:40</p> <p>3 If I ask a yes-no question, give me a yes or a no. 02:32:44</p> <p>4 I understand there might be a sentence or two of 02:32:49</p> <p>5 explanation. 02:32:51</p> <p>6 When I ask what you said to Ed Suraci, 02:32:52</p> <p>7 you don't need to tell me about every single 02:32:54</p> <p>8 conversation you had with Ed Suraci. 02:32:59</p> <p>9 MR. LEE: Why not? 02:32:59</p> <p>10 MS. BERTRAM: We've already got 02:33:00</p> <p>11 testimony on the record. 02:33:01</p> <p>12 MR. LEE: Why not -- whoa, whoa, whoa. 02:33:02</p> <p>13 MS. BERTRAM: There's a federal act 02:33:03</p> <p>14 called Sarbanes-Oxley. I have not gotten that 02:33:06</p> <p>15 answer. I've heard about LRN. I've heard about 02:33:09</p> <p>16 every conversation that he's had now for the third 02:33:11</p> <p>17 or fourth time. 02:33:14</p> <p>18 You're -- this is a waste of my time. 02:33:15</p> <p>19 It's a waste of my client's time. It's exquisitely 02:33:16</p> <p>20 expensive to be doing this, and I just want answers 02:33:21</p> <p>21 to my questions. 02:33:23</p> <p>22 So talk to your client. Let's take a 02:33:23</p> <p>23 five-minute break. 02:33:26</p> <p>24 MR. LEE: You may not like answers 02:33:27</p> <p>25 to -- to -- you may not like his answers, but he's 02:33:29</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Baker, Earl Donald - Vol. III

October 10, 2020

8 (Pages 508 to 511)

508	510
<p>1 answering your questions. 02:33:29</p> <p>2 All right. We'll take a break. 02:33:31</p> <p>3 MS. BERTRAM: I actually -- I actually 02:33:32</p> <p>4 like his answers, if you'd like to know. I just 02:33:33</p> <p>5 want answers -- answers that marry up with my 02:33:35</p> <p>6 questions. 02:33:38</p> <p>7 THE VIDEOGRAPHER: Going off the record 02:33:40</p> <p>8 at 2:33. 02:33:41</p> <p>9 * * * 02:33:45</p> <p>10 (Whereupon, there was a recess in the 02:33:45</p> <p>11 proceedings from 2:33 p.m. to 2:41 p.m.) 02:40:53</p> <p>12 * * * 02:41:00</p> <p>13 THE VIDEOGRAPHER: Going on the record 02:41:00</p> <p>14 at 2:41. 02:41:14</p> <p>15 BY MS. BERTRAM: 02:41:18</p> <p>16 Q. Mr. Baker, you said that Mr. Suraci 02:41:19</p> <p>17 said that he felt that it was a SOX-worthy 02:41:23</p> <p>18 situation. Did he use the words "SOX-worthy" when 02:41:27</p> <p>19 he spoke with you? 02:41:31</p> <p>20 A. I -- 02:41:34</p> <p>21 MR. LEE: Objection to the form of the 02:41:34</p> <p>22 question. 02:41:35</p> <p>23 But you may answer. 02:41:35</p> <p>24 THE WITNESS: I don't recall if he used 02:41:37</p> <p>25 those actual words. 02:41:38</p>	<p>1 prohibited by company policy? 02:42:50</p> <p>2 A. That's my belief. That was part of our 02:42:53</p> <p>3 conversation. Which exact words he used, six years 02:42:55</p> <p>4 later I can't say. But it was implicit that that 02:42:58</p> <p>5 was what we were discussing, and that's what he 02:43:02</p> <p>6 implied, yes. 02:43:04</p> <p>7 Q. And did you ever say to any Smith &amp; 02:43:05</p> <p>8 Wesson employee that the conduct that you were 02:43:09</p> <p>9 describing was illegal, fraudulent or constituted a 02:43:12</p> <p>10 securities violation? 02:43:17</p> <p>11 A. Yes. 02:43:19</p> <p>12 Q. Okay. When did you say that for the 02:43:20</p> <p>13 first time? Let me -- actually, let me break it 02:43:23</p> <p>14 down a little bit so we can have clear testimony. 02:43:28</p> <p>15 Did you ever say that you felt that the 02:43:30</p> <p>16 conduct of Larry Flatley and Pioneer issues was 02:43:33</p> <p>17 illegal? 02:43:38</p> <p>18 A. I believe I did. 02:43:40</p> <p>19 Q. And who did you say that to? 02:43:42</p> <p>20 A. Any number of people, but I can't off 02:43:44</p> <p>21 the top of my head single out one. 02:43:52</p> <p>22 Q. Okay. So you can't identify a single 02:43:54</p> <p>23 person that you said this conduct is illegal to? 02:43:58</p> <p>24 A. I would say that I probably did with 02:44:04</p> <p>25 Kathy Salvador, Ann Glica, Mr. Suraci, Mr. Cicero, 02:44:08</p>
509	511
<p>1 BY MS. BERTRAM: 02:41:41</p> <p>2 Q. Okay. And is it your understanding 02:41:41</p> <p>3 that he said that it was SOX-worthy because it was 02:41:44</p> <p>4 within the language outlined in the LRN? 02:41:50</p> <p>5 MR. LEE: Objection to the form of the 02:41:54</p> <p>6 question. Calls for speculation. 02:41:55</p> <p>7 But you may answer. 02:41:57</p> <p>8 THE WITNESS: I don't know in what 02:41:58</p> <p>9 context he thought. I would assume he took that 02:42:02</p> <p>10 training, but I'm not positive he did. I -- I 02:42:06</p> <p>11 think everyone that was salaried took it. 02:42:09</p> <p>12 BY MS. BERTRAM: 02:42:14</p> <p>13 Q. No, but did he ever tie the two -- in 02:42:15</p> <p>14 his conversations with you, did Mr. Suraci tie the 02:42:17</p> <p>15 categories of conduct in the LRN to whether 02:42:24</p> <p>16 something was SOX-worthy? 02:42:28</p> <p>17 MR. LEE: Objection to the form of the 02:42:30</p> <p>18 question. 02:42:32</p> <p>19 But you may answer. 02:42:33</p> <p>20 THE WITNESS: I'm unsure how much he 02:42:34</p> <p>21 tied together. I was -- 02:42:37</p> <p>22 BY MS. BERTRAM: 02:42:39</p> <p>23 Q. I'm asking what he said to you. Did he 02:42:40</p> <p>24 ever say that he felt it was SOX-worthy because 02:42:43</p> <p>25 what you were describing was within the conduct 02:42:46</p>	<p>1 probably some of my colleagues, possibly Jim 02:44:14</p> <p>2 Valley, possibly Josh Burry, his lead person James 02:44:18</p> <p>3 Peel and possibly -- there may be some others, but 02:44:24</p> <p>4 those are the ones I can think of that I would have 02:44:30</p> <p>5 mentioned that to. 02:44:33</p> <p>6 Q. But do you have a specific recollection 02:44:35</p> <p>7 of using the word "illegal" to any of those people 02:44:38</p> <p>8 in your conversations with them about the Pioneer 02:44:41</p> <p>9 situation? 02:44:45</p> <p>10 A. Any or all of them and most assuredly 02:44:46</p> <p>11 Glica, Salvador, Suraci, Cicero, and I would think 02:44:52</p> <p>12 Burry and James Valley, for sure. 02:45:01</p> <p>13 Q. And -- and -- 02:45:01</p> <p>14 A. The other ones, possibly. 02:45:04</p> <p>15 Q. And to focus things a little bit, let's 02:45:05</p> <p>16 not -- I'm not asking about people at your level or 02:45:10</p> <p>17 below. I'm talking about folks in HR or legal that 02:45:13</p> <p>18 you were communicating with about Pioneer. 02:45:18</p> <p>19 MR. LEE: You're -- you're breaking up. 02:45:20</p> <p>20 You -- you -- towards the end, you broke up. 02:45:23</p> <p>21 MS. BERTRAM: Okay. It may be me 02:45:25</p> <p>22 waving my hands. 02:45:26</p> <p>23 MR. LEE: You want to -- yeah, I don't 02:45:28</p> <p>24 know. You're -- you're fine right now, and then -- 02:45:29</p> <p>25 MS. BERTRAM: Okay. 02:45:31</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



512	514
<p>1 MR. LEE: -- sometimes -- right -- 02:45:32</p> <p>2 right now, it's great. 02:45:32</p> <p>3 MS. BERTRAM: Okay. I'll stop waving 02:45:34</p> <p>4 my hands around. 02:45:35</p> <p>5 BY MS. BERTRAM: 02:45:37</p> <p>6 Q. With respect to those individuals at HR 02:45:38</p> <p>7 and legal, did you identify the conduct that you 02:45:40</p> <p>8 believed to be illegal? 02:45:45</p> <p>9 A. Yes. 02:45:47</p> <p>10 Q. What conduct did you identify as 02:45:48</p> <p>11 illegal? 02:45:50</p> <p>12 MR. LEE: Objection. Asked and 02:45:52</p> <p>13 answered. 02:45:53</p> <p>14 But you may answer again. 02:45:53</p> <p>15 THE WITNESS: By -- there were 02:45:55</p> <p>16 situations where vendors were charging double or 02:46:00</p> <p>17 what I considered very exorbitant costs. There 02:46:04</p> <p>18 were ones who did things that -- they took tools 02:46:09</p> <p>19 out of the shop without -- without any 02:46:14</p> <p>20 accountability and then were selling them back 02:46:21</p> <p>21 again as new, or at least had the ability to do so. 02:46:23</p> <p>22 There were instances where they did 02:46:29</p> <p>23 tools incorrectly, and when we turned them back, we 02:46:31</p> <p>24 got no credit for them. There were also ones -- 02:46:34</p> <p>25 empty bins in the vending machine that was brought 02:46:39</p>	<p>1 words I used. 02:47:48</p> <p>2 MR. LEE: Object -- yeah, wait until -- 02:47:49</p> <p>3 wait until I can object. Okay. Wait -- just give 02:47:51</p> <p>4 it a little pause. I think there's probably a 02:47:53</p> <p>5 technological reason for a little pause as well. 02:47:56</p> <p>6 There's probably a little time before I hear it. 02:47:59</p> <p>7 Objection to the form of the question. 02:48:01</p> <p>8 Asked and answered. Badgering the witness. 02:48:03</p> <p>9 You may answer. 02:48:06</p> <p>10 THE WITNESS: Again, you asked what 02:48:08</p> <p>11 words I used. Those are the words I used. 02:48:09</p> <p>12 BY MS. BERTRAM: 02:48:12</p> <p>13 Q. So it's your testimony under oath that 02:48:12</p> <p>14 you said to representatives of Smith &amp; Wesson's HR 02:48:14</p> <p>15 department, legal department that this conduct is 02:48:19</p> <p>16 fraudulent. We're getting cheated. Is that your 02:48:23</p> <p>17 testimony? 02:48:28</p> <p>18 A. Yes. 02:48:29</p> <p>19 Q. Did you ever say to any representatives 02:48:29</p> <p>20 of the human resources or legal department that any 02:48:33</p> <p>21 conduct on the part of Smith &amp; Wesson employees 02:48:37</p> <p>22 constituted a securities violation? 02:48:40</p> <p>23 MR. LEE: Objection to the form of the 02:48:45</p> <p>24 question. 02:48:46</p> <p>25 But you may answer. 02:48:47</p>
513	515
<p>1 to their attention, and I was told not to -- not to 02:46:42</p> <p>2 worry about it, and no credit memo was ever issued 02:46:45</p> <p>3 for that. And these, in many cases, amounted to 02:46:49</p> <p>4 tens of thousands of dollars per incident. 02:46:53</p> <p>5 BY MS. BERTRAM: 02:46:57</p> <p>6 Q. And did you ever say to any of the 02:46:58</p> <p>7 folks you communicated with in HR or legal that you 02:47:00</p> <p>8 believed the conduct was fraudulent? 02:47:05</p> <p>9 A. I believe all of them. 02:47:08</p> <p>10 Q. You believe that you did? 02:47:11</p> <p>11 A. Yes. 02:47:13</p> <p>12 Q. Do you recall the specific words that 02:47:13</p> <p>13 you used in saying that any conduct was fraudulent? 02:47:14</p> <p>14 A. I probably just said that it was 02:47:19</p> <p>15 fraudulent, that it wasn't -- that we were not -- 02:47:26</p> <p>16 we were getting cheated at Smith &amp; Wesson, and I 02:47:32</p> <p>17 don't believe that the actions taken -- taken were 02:47:36</p> <p>18 in the best interest of Smith &amp; Wesson. So 02:47:40</p> <p>19 those -- 02:47:42</p> <p>20 Q. I'm asking -- 02:47:42</p> <p>21 A. -- were the words. 02:47:42</p> <p>22 Q. -- you, Mr. Baker, about the words that 02:47:43</p> <p>23 you used. 02:47:45</p> <p>24 MR. LEE: Objection. 02:47:45</p> <p>25 THE WITNESS: What I just said are the 02:47:46</p>	<p>1 THE WITNESS: I believe I did so with 02:48:50</p> <p>2 Mr. Cicero. 02:48:51</p> <p>3 BY MS. BERTRAM: 02:48:53</p> <p>4 Q. And do you recall what you said to 02:48:55</p> <p>5 Mr. Cicero about any alleged securities violation? 02:48:56</p> <p>6 A. I told him that if the -- that altering 02:49:00</p> <p>7 the database was, I thought, a -- a violation of -- 02:49:05</p> <p>8 and I didn't know whether I used "security fraud," 02:49:15</p> <p>9 but I know I said fraud against the shareholders 02:49:19</p> <p>10 because I felt that changing the database was 02:49:24</p> <p>11 illegal from a context of the SEC. 02:49:30</p> <p>12 Q. And who do you contend changed the 02:49:37</p> <p>13 database? 02:49:46</p> <p>14 A. I don't know who changed it. 02:49:47</p> <p>15 MR. LEE: Object -- wait until -- 02:49:48</p> <p>16 THE WITNESS: Sorry. 02:49:49</p> <p>17 MR. LEE: Wait until -- that's all 02:49:50</p> <p>18 right. Your -- 02:49:52</p> <p>19 Objection to the form of the question. 02:49:53</p> <p>20 But you may answer. 02:49:54</p> <p>21 THE WITNESS: I don't know who changed 02:49:56</p> <p>22 the database. 02:50:00</p> <p>23 BY MS. BERTRAM: 02:50:01</p> <p>24 Q. And did you ever say to anyone in the 02:50:03</p> <p>25 human resources or legal department at Smith &amp; 02:50:07</p>

Baker, Earl Donald - Vol. III

October 10, 2020

10 (Pages 516 to 519)

516	518
<p>1 Wesson that you felt that any -- any conduct was 02:50:10</p> <p>2 required to be disclosed to the SEC? 02:50:13</p> <p>3 MR. LEE: Can I -- can I have that 02:50:16</p> <p>4 question -- you -- you were garbled. 02:50:17</p> <p>5 But if -- if, Cindy, you heard it, then 02:50:19</p> <p>6 you can read it back to me. 02:50:21</p> <p>7 Towards the end, you got garbled a 02:50:22</p> <p>8 little bit. 02:50:22</p> <p>9 Did you hear it, Cindy? 02:50:28</p> <p>10 MS. BERTRAM: Let me ask a simpler 02:50:28</p> <p>11 question, John. 02:50:30</p> <p>12 MR. LEE: Okay. 02:50:31</p> <p>13 MS. BERTRAM: I'll strike the -- 02:50:31</p> <p>14 MR. LEE: Yeah, there's something -- 02:50:32</p> <p>15 there's something about -- right now, when you 02:50:32</p> <p>16 said, "Let me ask a simpler," you were fine. But 02:50:33</p> <p>17 it must be the way you're, like -- I don't know 02:50:36</p> <p>18 where your mic is, but you kind of like -- there -- 02:50:38</p> <p>19 periodically where it just gets garbled a little 02:50:41</p> <p>20 bit. 02:50:44</p> <p>21 MS. BERTRAM: Okay. I'm trying to stay 02:50:45</p> <p>22 closer, not wave my hands and not turn my face. 02:50:47</p> <p>23 BY MS. BERTRAM: 02:50:54</p> <p>24 Q. So did you -- did you ever tell anyone 02:50:54</p> <p>25 at Smith &amp; Wesson in the human resources or legal 02:50:56</p>	<p>1 bribes and what was constituted in a bribe and 02:52:15</p> <p>2 which actions being taken constituted fraud or 02:52:20</p> <p>3 actions against the interest of the company that 02:52:27</p> <p>4 you work for. 02:52:29</p> <p>5 You have a fiduciary relationship, and 02:52:31</p> <p>6 you should be acting in -- in concert with what's 02:52:33</p> <p>7 best for your company, not -- not to -- for any 02:52:38</p> <p>8 personal gain or for, you know, any other interest 02:52:45</p> <p>9 outside of what's good for the company. 02:52:51</p> <p>10 BY MS. BERTRAM: 02:52:54</p> <p>11 Q. And how did you gain that knowledge? 02:52:55</p> <p>12 A. Through the LRN. And then they did a 02:52:57</p> <p>13 second -- right after I made the submission to 02:53:04</p> <p>14 Kathy Salvador and Ann Glica, they did a second LRN 02:53:09</p> <p>15 that was not quarterly, but it was on ethics. And 02:53:14</p> <p>16 I believe that they made us take that in response 02:53:17</p> <p>17 to the fact that I made a submission to Kathy, and 02:53:21</p> <p>18 right away they came out with a thing on ethics 02:53:26</p> <p>19 that we were required to take. 02:53:28</p> <p>20 Prior to that, all LRNs were quarterly. 02:53:31</p> <p>21 So we weren't really due one for another quarter. 02:53:35</p> <p>22 But as soon as I made my submission, at the order 02:53:37</p> <p>23 of Mr. Debney, they did another one on ethics right 02:53:40</p> <p>24 away. So both of those covered those -- that area. 02:53:44</p> <p>25 Q. And did you have any other base of 02:53:48</p>
517	519
<p>1 department that you felt that information needed to 02:50:59</p> <p>2 be disclosed to the SEC? 02:51:02</p> <p>3 A. I don't believe so. 02:51:04</p> <p>4 Q. Did you ever tell anyone at Smith &amp; 02:51:07</p> <p>5 Wesson in the human resources or legal department 02:51:19</p> <p>6 that you felt that information had to be disclosed 02:51:22</p> <p>7 in an SEC filing? 02:51:26</p> <p>8 A. No, I did not. 02:51:27</p> <p>9 Q. What was your understanding of 02:51:31</p> <p>10 Sarbanes-Oxley when you worked for Smith &amp; Wesson? 02:51:37</p> <p>11 MR. LEE: Objection to the form of the 02:51:39</p> <p>12 question. 02:51:41</p> <p>13 But you may answer. 02:51:41</p> <p>14 THE WITNESS: I -- I believe that I -- 02:51:43</p> <p>15 I explained where I -- I found out about 02:51:48</p> <p>16 Sarbanes-Oxley. Without repeating the same, what 02:51:52</p> <p>17 specifically do you need? 02:51:59</p> <p>18 BY MS. BERTRAM: 02:52:00</p> <p>19 Q. What was your understanding of what 02:52:01</p> <p>20 Sarbanes-Oxley prohibited while you were employed 02:52:03</p> <p>21 by Smith &amp; Wesson? 02:52:05</p> <p>22 MR. LEE: Objection to the form of the 02:52:06</p> <p>23 question. 02:52:07</p> <p>24 But you may answer. 02:52:08</p> <p>25 THE WITNESS: It prohibited taking 02:52:09</p>	<p>1 knowledge regarding Sarbanes-Oxley while you were 02:53:50</p> <p>2 employed by the company? 02:53:52</p> <p>3 A. Yes. I did some research after the 02:53:53</p> <p>4 fact, and I got a -- an email from my 02:53:57</p> <p>5 brother-in-law, who was the president of 02:54:02</p> <p>6 Rolls-Royce, and he -- he gave me some information. 02:54:08</p> <p>7 You have some emails from him. And, of course, 02:54:12</p> <p>8 verbally he -- he gave me information. 02:54:16</p> <p>9 Q. When you say that you did some research 02:54:19</p> <p>10 after the fact, what do you mean when you say 02:54:23</p> <p>11 "after the fact"? 02:54:26</p> <p>12 A. After the LRN training, throughout the 02:54:27</p> <p>13 process of -- after I had made a submission with 02:54:32</p> <p>14 Kathy Salvador and it progressed to the point 02:54:38</p> <p>15 through Mr. Suraci to Mr. Cicero, at the point 02:54:40</p> <p>16 where Leo got harassed, I knew it wasn't proper 02:54:45</p> <p>17 what was going on, but I didn't know contextually 02:54:50</p> <p>18 how to deal with it. So I researched and found a 02:54:54</p> <p>19 thing that talked about harassment of third 02:54:59</p> <p>20 parties, and I put that in the email to Mr. Suraci. 02:55:03</p> <p>21 But I -- I learned that wording that I used in 02:55:06</p> <p>22 there through an Internet search. 02:55:09</p> <p>23 Q. And as you indicated, the -- you -- you 02:55:12</p> <p>24 produced the emails from your brother-in-law, 02:55:20</p> <p>25 correct? 02:55:23</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

520	522
<p>1 <b>A. Yes.</b> 02:55:23</p> <p>2 Q. Okay. You mentioned that 02:55:24</p> <p>3 Sarbanes-Oxley prohibits taking bribes. What was 02:55:29</p> <p>4 the basis for any claim on your part while you were 02:55:33</p> <p>5 employed by the company that anybody at the company 02:55:36</p> <p>6 was taking bribes? 02:55:38</p> <p>7 MR. LEE: Objection to the form of the 02:55:42</p> <p>8 question. 02:55:43</p> <p>9 But you may answer. 02:55:44</p> <p>10 THE WITNESS: They were receiving gifts 02:55:46</p> <p>11 from a vendor, which is inappropriate when they're 02:55:51</p> <p>12 the person responsible for divvying out who gets 02:55:55</p> <p>13 what work. And if the amount goes beyond a nominal 02:56:00</p> <p>14 amount, it's improper. And it's also listed in 02:56:09</p> <p>15 our -- our company handbook. It wasn't proper. 02:56:14</p> <p>16 People were doing it. And there were many more 02:56:18</p> <p>17 situations where there was reports of people doing 02:56:21</p> <p>18 it. 02:56:25</p> <p>19 So I didn't always see from A to B 02:56:26</p> <p>20 where they actually received it in their hand, but 02:56:30</p> <p>21 when you see something inappropriate, it -- it was 02:56:33</p> <p>22 my responsibility as a good employee to report it 02:56:36</p> <p>23 to my bosses. If it -- if it was proved to be 02:56:40</p> <p>24 untrue, whatever, that's -- that's in their realm. 02:56:46</p> <p>25 I needed to take the information I have and give it 02:56:49</p>	<p>1 some dealings in Europe. I don't know the 02:58:10</p> <p>2 specifics. But I did watch them escort him out of 02:58:14</p> <p>3 the building. His office was a couple hundred feet 02:58:17</p> <p>4 from mine. So I saw the hoopla, and that was what 02:58:23</p> <p>5 I was told. 02:58:27</p> <p>6 Q. And what was his name, again? It was 02:58:28</p> <p>7 Edgar; is that right? 02:58:30</p> <p>8 <b>A. I believe it was Mark Edgar.</b> 02:58:31</p> <p>9 Q. Okay. And who told you that he was 02:58:33</p> <p>10 being terminated for taking bribes? 02:58:35</p> <p>11 <b>A. I am not positive, but I believe it was</b> 02:58:38</p> <p>12 <b>Jeremy Beu, who was his -- his supervisor in</b> 02:58:40</p> <p>13 <b>Jeremy's area. So I -- I believe it may have been</b> 02:58:47</p> <p>14 <b>Jeremy -- or Jeremy may have been Mark Edgar's</b> 02:58:49</p> <p>15 <b>boss.</b> 02:58:54</p> <p>16 Q. And other than Mr. Beu, what he said to 02:58:54</p> <p>17 you, you don't have any personal knowledge of why 02:58:58</p> <p>18 Mr. Edgar was terminated? 02:59:01</p> <p>19 <b>A. No.</b> 02:59:03</p> <p>20 Q. Do you believe that Smith &amp; Wesson 02:59:05</p> <p>21 engaged in any mail fraud, wire fraud, bank fraud 02:59:14</p> <p>22 or securities fraud? 02:59:18</p> <p>23 MR. LEE: Objection to the form of the 02:59:20</p> <p>24 question. 02:59:21</p> <p>25 But you may answer. 02:59:23</p>
521	523
<p>1 to them. 02:56:52</p> <p>2 BY MS. BERTRAM: 02:56:53</p> <p>3 Q. And we talked about the -- the gifts 02:56:53</p> <p>4 that were given in connection with the -- the 02:56:57</p> <p>5 biggies, right? 02:57:02</p> <p>6 <b>A. Yes.</b> 02:57:03</p> <p>7 Q. Other than those -- we talked about a 02:57:04</p> <p>8 gift card that you gave to HR in March of 2014, 02:57:07</p> <p>9 correct? 02:57:11</p> <p>10 <b>A. Yes.</b> 02:57:11</p> <p>11 Q. Other than those two sets of gifts, do 02:57:13</p> <p>12 you have any direct personal knowledge of any other 02:57:19</p> <p>13 gifts that were given to Smith &amp; Wesson employees? 02:57:22</p> <p>14 <b>A. I received many thirdhand accounts.</b> 02:57:26</p> <p>15 Q. And the thirdhand accounts were from 02:57:29</p> <p>16 employees at your level or below, correct? 02:57:33</p> <p>17 <b>A. Yes. There was also one firsthand</b> 02:57:36</p> <p>18 <b>account.</b> 02:57:39</p> <p>19 Q. What was -- what was the firsthand 02:57:41</p> <p>20 account? 02:57:43</p> <p>21 <b>A. In June, I think, of 2014, an</b> 02:57:44</p> <p>22 <b>engineer -- I believe it was Mark Edgar -- was</b> 02:57:50</p> <p>23 <b>escorted out with armed guards from his office and</b> 02:57:53</p> <p>24 <b>terminated, and I was told it was because he was</b> 02:57:59</p> <p>25 <b>accepting bribes. Then it was some connection with</b> 02:58:03</p>	<p>1 THE WITNESS: I don't pretend to be -- 02:59:24</p> <p>2 I'm not a lawyer, so I don't know all the legal 02:59:29</p> <p>3 implications. I do know that if there was fraud 02:59:31</p> <p>4 taking place and it extended to Houlton, Maine, 02:59:35</p> <p>5 that's across state lines. So I don't know, you -- 02:59:42</p> <p>6 you know. You'd have to research that. I -- I 02:59:46</p> <p>7 don't know specific laws. 02:59:50</p> <p>8 BY MS. BERTRAM: 02:59:52</p> <p>9 Q. Do you have any other reason to believe 02:59:53</p> <p>10 that the conduct that you complained about at 02:59:55</p> <p>11 Smith &amp; Wesson violated any mail, wire, bank or 02:59:57</p> <p>12 securities fraud? 03:00:02</p> <p>13 MR. LEE: Objection to the form of the 03:00:03</p> <p>14 question. It misstates the witness's prior 03:00:04</p> <p>15 testimony. He's testified that he does not know. 03:00:07</p> <p>16 But you may answer the question. 03:00:09</p> <p>17 THE WITNESS: As I explained, I don't 03:00:12</p> <p>18 know what laws would be involved. But if there was 03:00:14</p> <p>19 fraudulent activity relating to vendors and 03:00:19</p> <p>20 appropriate -- against the interest of the company, 03:00:25</p> <p>21 that if that extended to Maine, our other plant, 03:00:28</p> <p>22 that that would constitute possibly fraud in those 03:00:33</p> <p>23 areas, wire fraud. 03:00:38</p> <p>24 BY MS. BERTRAM: 03:00:40</p> <p>25 Q. Did you ever allege to anybody at 03:00:41</p>

524	526
<p>1 Smith &amp; Wesson that -- that its conduct constituted 03:00:42</p> <p>2 mail, wire, bank or securities fraud? 03:00:47</p> <p>3 <b>A. I don't know for certain. I may have, 03:00:50</b></p> <p>4 <b>but I can't recall anything for -- specific. 03:00:53</b></p> <p>5 Q. Okay. Is it your position that 03:00:59</p> <p>6 Smith &amp; Wesson violated any federal laws regarding 03:01:02</p> <p>7 fraud against shareholders with respect to the 03:01:05</p> <p>8 conduct you complained about? 03:01:08</p> <p>9 MR. LEE: Objection to the form of the 03:01:10</p> <p>10 question. He's answered that question that he 03:01:11</p> <p>11 doesn't know. 03:01:13</p> <p>12 But you may answer it again. 03:01:15</p> <p>13 THE WITNESS: I don't know 03:01:16</p> <p>14 specifically. But I do think that -- in my heart, 03:01:17</p> <p>15 that the things I described did rise to that level. 03:01:21</p> <p>16 BY MS. BERTRAM: 03:01:27</p> <p>17 Q. And is it your position that any 03:01:27</p> <p>18 conduct about which you complained violated any -- 03:01:30</p> <p>19 MR. LEE: You completely broke up. I, 03:01:37</p> <p>20 like -- yeah, even Cindy didn't hear it. 03:01:39</p> <p>21 MS. BERTRAM: Okay. 03:01:39</p> <p>22 MR. LEE: Like, half of your 03:01:42</p> <p>23 question -- it's really weird. When you said 03:01:43</p> <p>24 "Okay," it's perfectly fine. And if some -- 03:01:45</p> <p>25 somehow, like -- like, the last second half of that 03:01:48</p>	<p>1 position that any of the conduct you complained 03:02:47</p> <p>2 about violated any rule or regulation of the SEC?) 03:02:47</p> <p>3 MR. LEE: Okay. Cindy was very clear, 03:02:49</p> <p>4 and that's what I thought what the question was 03:02:50</p> <p>5 from the way your lips were moving, but -- "you" 03:02:54</p> <p>6 being Connie. 03:02:54</p> <p>7 But, Earl, if you understood the 03:02:55</p> <p>8 question. 03:02:56</p> <p>9 Same objection. Objection to the form 03:02:57</p> <p>10 of the question. Asked and answered. 03:02:58</p> <p>11 But you may answer it again. 03:02:59</p> <p>12 THE WITNESS: Again, I don't know the 03:03:02</p> <p>13 laws pertaining to the SEC. But it's my 03:03:05</p> <p>14 inclination that if the database was altered, yes, 03:03:08</p> <p>15 and that was reported, that that would possibly 03:03:12</p> <p>16 violate SEC regulations, depending on what they did 03:03:16</p> <p>17 with it. 03:03:21</p> <p>18 BY MS. BERTRAM: 03:03:22</p> <p>19 Q. Is it fair to say that you disagreed 03:03:22</p> <p>20 with certain of the decisions to purchase tools 03:03:25</p> <p>21 from Pioneer Tool? 03:03:28</p> <p>22 MR. LEE: Objection to the form of the 03:03:29</p> <p>23 question. 03:03:30</p> <p>24 But you may answer. 03:03:31</p> <p>25 THE WITNESS: I disagreed with the 03:03:34</p>
525	527
<p>1 question, like, I heard nothing. 03:01:51</p> <p>2 MS. BERTRAM: Okay. I'm glad you 03:01:53</p> <p>3 stopped me because I do want to have a clear 03:01:56</p> <p>4 record. 03:01:59</p> <p>5 BY MS. BERTRAM: 03:01:59</p> <p>6 Q. Did you ever -- is it your position 03:01:59</p> <p>7 that any of the conduct you complained about 03:02:01</p> <p>8 violated any rule or regulation of the SEC? 03:02:04</p> <p>9 MR. LEE: Objection. I think what -- I 03:02:07</p> <p>10 didn't hear the second-to-last word -- couple of 03:02:10</p> <p>11 words. 03:02:12</p> <p>12 But objection to the form of the 03:02:12</p> <p>13 question. Asked and answered. 03:02:13</p> <p>14 But you may answer again, if you heard 03:02:15</p> <p>15 the question, Earl. 03:02:18</p> <p>16 MS. BERTRAM: Cindy, did you hear a 03:02:30</p> <p>17 complete question? 03:02:30</p> <p>18 THE REPORTER: Yes, but it is garbly at 03:02:30</p> <p>19 times. "The SEC" was the last two words. 03:02:30</p> <p>20 MS. BERTRAM: Yeah. I said Securities 03:02:31</p> <p>21 and Exchange Commission. 03:02:33</p> <p>22 MR. LEE: Can you -- Cindy, can you 03:02:33</p> <p>23 just read the question back? That way, we know. 03:02:33</p> <p>24 (The following question was read back: 03:02:33</p> <p>25 Q: Did you ever -- is it your 03:02:33</p>	<p>1 proportioning and also not holding accountability 03:03:36</p> <p>2 to the quality and delivery of the tools for many 03:03:43</p> <p>3 vendors, Pioneer being included. 03:03:47</p> <p>4 BY MS. BERTRAM: 03:03:51</p> <p>5 Q. And by "proportioning," you're talking 03:03:51</p> <p>6 about the percentage of tools that were purchased 03:03:54</p> <p>7 from Pioneer Tool, correct? 03:03:56</p> <p>8 <b>A. Yes.</b> 03:03:58</p> <p>9 Q. And is it fair to say that you aired 03:03:59</p> <p>10 those concerns in your communications with 03:04:06</p> <p>11 Smith &amp; Wesson? 03:04:09</p> <p>12 <b>A. Yes.</b> 03:04:14</p> <p>13 Q. Now, you've made reference to 03:04:15</p> <p>14 Mr. O'Brien a couple of times. Were there any 03:04:17</p> <p>15 other employees, to your knowledge, that raised 03:04:22</p> <p>16 concerns about Pioneer Tools other than Mr. O'Brien 03:04:25</p> <p>17 and you? 03:04:29</p> <p>18 <b>A. Yes.</b> 03:04:30</p> <p>19 Q. Who else raised concerns, to your 03:04:31</p> <p>20 knowledge? 03:04:34</p> <p>21 <b>A. I think I had mentioned in deposition 03:04:34</b></p> <p>22 <b>before, James Peel, Josh Burry, Jim Valley, Dwayne 03:04:37</b></p> <p>23 <b>Reese, Mr. Jendrezak, Lamonte Parks, just all in 03:04:47</b></p> <p>24 <b>the documents -- in my deposition I -- before I -- 03:04:57</b></p> <p>25 <b>I think I had mentioned all those men. 03:04:59</b></p>

Baker, Earl Donald - Vol. III

October 10, 2020

13 (Pages 528 to 531)

528			530		
1	Q. And what was Mr. Reese's first name?	03:05:03	1	Q. And do you know if Mr. Valley is still	03:07:41
2	<b>A. Dwayne.</b>	03:05:07	2	with the company?	03:07:43
3	Q. I want to make certain I have all of	03:05:09	3	<b>A. I do not.</b>	03:07:45
4	the names. It's your contention -- it's your	03:05:13	4	Q. Was he still there when you left the	03:07:47
5	understanding that James Peel, Josh Burry, Jim	03:05:16	5	company in September of 2014?	03:07:50
6	Valley, Dwayne Reese, Lamonte Parks and the	03:05:20	6	<b>A. Yes.</b>	03:07:51
7	individual we've been calling Leo J. --	03:05:23	7	Q. And what about Dwayne Reese? When did	03:07:52
8	<b>A. Yes.</b>	03:05:26	8	he raise concerns about Pioneer Tool, to your	03:07:55
9	Q. -- also raised concerns about	03:05:27	9	knowledge?	03:07:57
10	Pioneer Tools; is that right?	03:05:29	10	<b>A. I was told -- let's see. I'm not</b>	03:07:58
11	<b>A. Yes.</b>	03:05:32	11	<b>certain the exact time, but it was in coordination</b>	03:08:05
12	Q. Okay. And when -- when did Mr. Peel	03:05:33	12	<b>with -- I was sent to him to verify something, and</b>	03:08:08
13	raise concerns about Pioneer Tool, to your	03:05:34	13	<b>that's when he voiced his concerns. But I'm not</b>	03:08:14
14	knowledge?	03:05:38	14	<b>positive of the time frame.</b>	03:08:17
15	<b>A. I would guess it was the late spring,</b>	03:05:40	15	Q. And did -- do you know who he voiced	03:08:18
16	<b>early fall of -- early summer of 2013.</b>	03:05:48	16	his concerns to?	03:08:22
17	Q. And what was Mr. Peel's position at	03:05:55	17	<b>A. He voiced his concerns to me.</b>	03:08:23
18	that time?	03:05:59	18	Q. Do you know whether he voiced his	03:08:27
19	<b>A. He was lead man in Josh Burry's</b>	03:05:59	19	concerns to others?	03:08:29
20	<b>department, which would have been TC Barrel.</b>	03:06:04	20	<b>A. I know he at least talked to a few</b>	03:08:31
21	Q. And do you know whether he's still with	03:06:08	21	<b>people. That's why they had pointed me to him</b>	03:08:35
22	the company?	03:06:09	22	<b>to -- that I needed to speak to him.</b>	03:08:40
23	<b>A. I do not know.</b>	03:06:10	23	Q. And do you know whether he ever spoke	03:08:42
24	Q. Okay. And when you left the company,	03:06:12	24	to anyone in human resources, the legal department	03:08:44
25	he was still working for Smith & Wesson, correct?	03:06:16	25	or called the hotline with respect to his concerns	03:08:48
529			531		
1	<b>A. Yes.</b>	03:06:19	1	about Pioneer Tool?	03:08:51
2	Q. To your knowledge, when did Mr. Josh	03:06:19	2	<b>A. I don't, no.</b>	03:08:52
3	Burry raise concerns about Pioneer Tool?	03:06:25	3	Q. And what about James Peel? Do you know	03:08:57
4	<b>A. On or about the same time.</b>	03:06:28	4	whether he complained to HR, legal or the hotline	03:08:59
5	Q. And do you know if he's still with	03:06:31	5	about his concerns about Pioneer Tool?	03:09:02
6	Smith & Wesson?	03:06:33	6	<b>A. I -- I know that he has complained or</b>	03:09:04
7	<b>A. It's my belief he is not.</b>	03:06:34	7	<b>he had mentioned that he complained quite a bit,</b>	03:09:07
8	Q. Okay. Do you know when he left?	03:06:38	8	<b>but to whom, I wouldn't know.</b>	03:09:09
9	<b>A. He left while I was still there, but I</b>	03:06:39	9	Q. What about Josh Burry? Do you know who	03:09:11
10	<b>don't know if he's come back. But he had left, I</b>	03:06:43	10	he complained to?	03:09:15
11	<b>would say, early '14.</b>	03:06:48	11	<b>A. Again, I know he had complained to a</b>	03:09:16
12	Q. And do you know why he left?	03:06:51	12	<b>number of people. He did mention specifically he</b>	03:09:19
13	<b>A. I know his wife was a recruiter and</b>	03:06:53	13	<b>had talked to Tom Walsh. But the other people, I</b>	03:09:22
14	<b>that he looks at a lot of different jobs. So I</b>	03:06:59	14	<b>wouldn't be aware of exactly who.</b>	03:09:27
15	<b>assumed it was just he found a better opportunity.</b>	03:07:03	15	Q. Okay. And do you know whether	03:09:29
16	Q. What about Mr. O'Brien? Is he still	03:07:06	16	Mr. Reese is still with the company?	03:09:33
17	with the company?	03:07:10	17	<b>A. I do not.</b>	03:09:35
18	<b>A. Yes, as far as I know.</b>	03:07:11	18	Q. And when did Mr. Parks complain about	03:09:36
19	Q. Do you know what his position is?	03:07:13	19	Pioneer Tools, to your knowledge?	03:09:43
20	<b>A. I think I do, but I don't know for</b>	03:07:15	20	<b>A. I would say early spring and</b>	03:09:45
21	<b>certain.</b>	03:07:20	21	<b>periodically throughout.</b>	03:09:52
22	Q. Okay. And when did Mr. Valley raise	03:07:20	22	Q. Early spring of 2013 or --	03:09:55
23	concerns about Pioneer Tool, to your knowledge?	03:07:26	23	<b>A. Yes.</b>	03:09:58
24	<b>A. That, for certain, would have been</b>	03:07:29	24	Q. -- 2014?	03:10:00
25	<b>early in -- it would have been the spring of 2013.</b>	03:07:33	25	<b>A. '13.</b>	03:10:00



532			534		
1	Q. And do you know who he complained to?	03:10:01	1	<b>A. Don't know. It was electronic, but I</b>	03:12:20
2	<b>A. I do not.</b>	03:10:03	2	<b>don't know whether it was email or text.</b>	03:12:23
3	Q. He's still with the company, right?	03:10:06	3	Q. You don't know what Mr. Debney did with	03:12:26
4	<b>A. I really don't know.</b>	03:10:10	4	that letter, right?	03:12:31
5	Q. Okay. And what about Leo J.? When did	03:10:12	5	<b>A. No.</b>	03:12:32
6	he raise -- first raise concerns about Pioneer	03:10:16	6	Q. You don't know who he provided it to,	03:12:32
7	Tool?	03:10:20	7	right?	03:12:35
8	<b>A. I don't know when he first raised --</b>	03:10:20	8	<b>A. No.</b>	03:12:35
9	Q. To your knowledge -- to your knowledge,	03:10:25	9	Q. And you don't know whether the company	03:12:35
10	when did he first raise concerns?	03:10:26	10	did anything, and if so, what it did in response to	03:12:37
11	<b>A. The only thing I'm aware of is when he</b>	03:10:28	11	that letter, correct?	03:12:41
12	<b>first raised the -- the issue with me. But who he</b>	03:10:31	12	<b>A. No.</b>	03:12:43
13	<b>talked to first or any time frame before me, I</b>	03:10:36	13	MR. LEE: Yes, she's correct, or, no,	03:12:49
14	<b>don't know.</b>	03:10:39	14	she's not correct or --	03:12:50
15	Q. Now, you explained that you raised	03:10:40	15	THE WITNESS: She's correct that I	03:12:54
16	concerns that he had been harassed for providing	03:10:44	16	don't know --	03:12:54
17	information. Do you know who he complained to	03:10:47	17	MR. LEE: No.	03:12:54
18	before he was harassed?	03:10:51	18	THE WITNESS: -- the specific reaction.	03:12:56
19	MR. LEE: Objection. Sorry. Objection	03:10:53	19	I don't know the specific reaction they had.	03:12:59
20	to the form of the question. I think I -- do -- I	03:10:55	20	MR. LEE: Earl, where is your mic?	03:13:15
21	think I got everything. So long as Cindy got the	03:10:58	21	Where is your mic?	03:13:18
22	question and Earl understood the question, that's	03:11:01	22	THE WITNESS: It hangs on the --	03:13:18
23	fine.	03:11:03	23	MR. LEE: Okay.	03:13:18
24	But objection to the form of the	03:11:04	24	THE WITNESS: -- earphone things.	03:13:19
25	question.	03:11:04	25	MR. LEE: Okay.	03:13:20
533			535		
1	But you may answer.	03:11:05	1	BY MS. BERTRAM:	03:13:20
2	MS. BERTRAM: That was a terrible	03:11:07	2	Q. If you can go to Plaintiff's Exhibit	03:13:21
3	question, so I'm going to withdraw it.	03:11:09	3	227.1.	03:13:24
4	BY MS. BERTRAM:	03:11:12	4	MR. LEE: Hold on. Let me find it.	03:13:25
5	Q. And do you know who Mr. Leo J.	03:11:12	5	Did you say 227.1?	03:13:40
6	complained to?	03:11:14	6	MS. BERTRAM: Yes, plaintiff's --	03:13:44
7	<b>A. I don't know firsthand. I was told</b>	03:11:15	7	MR. LEE: Is this -- is this in that	03:13:44
8	<b>that he had spoken with Mr. Cicero.</b>	03:11:19	8	pile called "TELG Production," T-E-L-G Production?	03:13:46
9	Q. And do you know if he's still with the	03:11:24	9	MS. BERTRAM: No. It's a document that	03:13:51
10	company?	03:11:31	10	you used with our witnesses. It's in the	03:13:53
11	<b>A. I had heard he was not.</b>	03:11:34	11	plaintiff's exhibit group.	03:13:55
12	Q. Do you know when he left?	03:11:36	12	MR. LEE: Which -- tell me which one it	03:13:57
13	<b>A. No. It would have been after I left.</b>	03:11:38	13	is, because instead of finding it -- let's see.	03:13:59
14	Q. Do you know why he left?	03:11:42	14	Hold on.	03:14:02
15	<b>A. I believe health. I was told health.</b>	03:11:43	15	MS. BERTRAM: It's Exhibit 2 -- 227.1.	03:14:03
16	Q. Now, we previously have looked at a	03:11:48	16	Let me just double-check it.	03:14:06
17	letter from 2010 that Mr. O'Brien sent to	03:11:54	17	MR. LEE: Okay.	03:14:08
18	Mr. Debney, right?	03:11:59	18	THE WITNESS: If I may, that number	03:14:11
19	<b>A. Okay. Yes.</b>	03:12:00	19	doesn't correlate with any of the numbers on the	03:14:12
20	Q. And when did you first become aware of	03:12:01	20	books I have that say "Plaintiff's Exhibits."	03:14:14
21	the 2010 letter that Mr. O'Brien sent?	03:12:04	21	MR. LEE: That's why -- and I -- that's	03:14:18
22	<b>A. He sent it to me, but I don't remember</b>	03:12:07	22	why I was wondering. There's a folder that I have	03:14:20
23	<b>the time frame.</b>	03:12:13	23	called "TELG Production."	03:14:22
24	Q. He sent it to you -- to you by email or	03:12:16	24	MS. BERTRAM: It's not in there.	03:14:25
25	by text?	03:12:18	25	MR. LEE: Okay.	03:14:26



Baker, Earl Donald - Vol. III

October 10, 2020

15 (Pages 536 to 539)

536	538
<p>1 MS. BERTRAM: It is in a binder -- 03:14:34</p> <p>2 let's see where the cover is -- that says -- it 03:14:39</p> <p>3 does not have -- it does not have tabs. At least 03:14:47</p> <p>4 my version of it looks like this. And one volume 03:14:50</p> <p>5 goes through Exhibit 199, and another starts with 03:14:57</p> <p>6 200. The next one starts with 200. 03:15:03</p> <p>7 MR. LEE: Supplement for -- hold on. 03:15:06</p> <p>8 MS. BERTRAM: Actually, the cover looks 03:15:12</p> <p>9 like this. It has "Exhibit 200" up in the upper 03:15:14</p> <p>10 right-hand corner. 03:15:17</p> <p>11 BY MS. BERTRAM: 03:15:22</p> <p>12 Q. Do you see that, Mr. Baker? 03:15:22</p> <p>13 <b>A. The book that you showed, I have no 03:15:28</b></p> <p>14 <b>book that says that. I -- I have one that says 03:15:30</b></p> <p>15 <b>"Smith &amp; Wesson Exhibits" -- 03:15:34</b></p> <p>16 Q. No. It's just -- look for one that 03:15:36</p> <p>17 says -- 03:15:36</p> <p>18 <b>A. -- "Plaintiff's Exhibits" -- 03:15:36</b></p> <p>19 Q. Hold on. Rather than pulling them all 03:15:40</p> <p>20 up, look for one that has a label that says 03:15:42</p> <p>21 "Plaintiff's Exhibits." Put those three aside. 03:15:45</p> <p>22 And it should, in numerical order, be in that 03:15:48</p> <p>23 group -- in one of those binders. They're -- 03:15:51</p> <p>24 they're in exhibit order. 03:15:53</p> <p>25 <b>A. Okay. I'm looking for 200? 03:16:05</b></p>	<p>1 Q. And that was -- this was created on an 03:17:25</p> <p>2 Excel spreadsheet by Mr. Francis, correct? 03:17:27</p> <p>3 <b>A. Yes. 03:17:30</b></p> <p>4 Q. And he inputted the data into the Excel 03:17:31</p> <p>5 spreadsheet, right? 03:17:34</p> <p>6 <b>A. Yes. 03:17:35</b></p> <p>7 Q. It's your understanding that the Excel 03:17:36</p> <p>8 spreadsheet had macros in it that computed certain 03:17:38</p> <p>9 results, correct? 03:17:42</p> <p>10 <b>A. Yes. 03:17:43</b></p> <p>11 Q. And the information -- the numbers that 03:17:44</p> <p>12 are in the second page of Deposition Exhibit 227.1 03:17:47</p> <p>13 are numbers that you supplied to Mr. Francis, 03:17:52</p> <p>14 right? 03:17:55</p> <p>15 <b>A. Yes. 03:17:55</b></p> <p>16 Q. And to your knowledge, he didn't 03:17:56</p> <p>17 double-check any of the numbers that you provided 03:17:59</p> <p>18 to him, right? 03:18:01</p> <p>19 <b>A. My -- he did double-check in that he 03:18:02</b></p> <p>20 <b>called me back two or three times to check with 03:18:06</b></p> <p>21 <b>numbers and so forth. So it was a process that 03:18:13</b></p> <p>22 <b>took days. So he didn't just get numbers and call 03:18:16</b></p> <p>23 <b>back. He -- there was some back-and-forth so 03:18:20</b></p> <p>24 <b>that -- it was my understanding he was looking at 03:18:25</b></p> <p>25 <b>numbers and wanting to make sure that the numbers 03:18:27</b></p>
537	539
<p>1 Q. 22 -- 227.1. 03:16:12</p> <p>2 MR. LEE: I obviously don't have the 03:16:23</p> <p>3 binders -- 03:16:25</p> <p>4 THE WITNESS: I got it. 03:16:26</p> <p>5 MR. LEE: Okay. 03:16:26</p> <p>6 BY MS. BERTRAM: 03:16:30</p> <p>7 Q. So you have it? This is a July 16, 03:16:30</p> <p>8 2014, email from you to Mr. Debney, right? 03:16:33</p> <p>9 <b>A. Yes. 03:16:36</b></p> <p>10 Q. And you attach to that a document 03:16:38</p> <p>11 called "Cutter Cost Savings Analysis," correct? 03:16:40</p> <p>12 <b>A. Yes. 03:16:44</b></p> <p>13 Q. And you forwarded that to him within 03:16:46</p> <p>14 one hour of receiving the first draft of the 03:16:48</p> <p>15 Cutter Cost Savings Analysis from Mr. Francis, 03:16:52</p> <p>16 right? 03:16:57</p> <p>17 <b>A. I -- I can't say for certain on the 03:16:59</b></p> <p>18 <b>timing. I -- I don't recall now. 03:17:00</b></p> <p>19 Q. Well, let's -- let's look at the 03:17:05</p> <p>20 exhibit. It's called "Cutter Cost Savings 03:17:06</p> <p>21 Analysis," correct? 03:17:10</p> <p>22 <b>A. Yes. 03:17:11</b></p> <p>23 Q. And it has the document number in the 03:17:12</p> <p>24 lower right-hand corner M00787, right? 03:17:14</p> <p>25 <b>A. Yes. 03:17:25</b></p>	<p>1 <b>in there were correct. 03:18:30</b></p> <p>2 Q. But those communications occurred after 03:18:31</p> <p>3 you sent the email to Mr. Debney, correct? 03:18:33</p> <p>4 <b>A. I -- no, I don't believe so. 03:18:37</b></p> <p>5 Q. Okay. Well, let's look at -- this 03:18:39</p> <p>6 should be around the same area. Let's first look 03:18:47</p> <p>7 at Exhibit 225 of that same binder. 03:18:51</p> <p>8 MR. LEE: Just to make the record 03:19:11</p> <p>9 clear, Connie, if this is also Defendant's 225, 03:19:13</p> <p>10 that's fine, but the reason why I was confused, 03:19:16</p> <p>11 it's Plaintiff's 225. 03:19:18</p> <p>12 MS. BERTRAM: That's correct. 03:19:20</p> <p>13 MR. LEE: Okay. 03:19:23</p> <p>14 MS. BERTRAM: I keep saying that, but 03:19:23</p> <p>15 maybe it's going out. 03:19:25</p> <p>16 BY MS. BERTRAM: 03:19:28</p> <p>17 Q. Are you at Plaintiff's Exhibit 225, 03:19:28</p> <p>18 Mr. Baker? 03:19:30</p> <p>19 <b>A. No, I haven't found it yet. My book 03:19:31</b></p> <p>20 <b>goes from 227 to 22 -- I'm sorry. It goes from 03:19:33</b></p> <p>21 <b>217, and the very next one is 227. 03:19:48</b></p> <p>22 Q. You might be looking at an old version 03:20:33</p> <p>23 of the notebook that I sent to you. 03:20:36</p> <p>24 <b>A. Okay. This is the one -- the last one 03:20:40</b></p> <p>25 <b>that I received. 03:20:42</b></p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald - Vol. III

October 10, 2020

16 (Pages 540 to 543)

540			542		
1	MR. LEE: Connie, this is	03:21:04	1	MS. BERTRAM: Now, how am I going to be	03:24:21
2	Plaintiff's 217 that you're referring to, right?	03:21:05	2	able to share this document given the fact that you	03:24:23
3	MS. BERTRAM: Hold on. I have -- I	03:21:08	3	guys are in control of the Zoom? Are you able to	03:24:25
4	have it as Exhibit 225. It's in that same binder	03:21:17	4	share with me the ability to share?	03:24:28
5	that Mr. -- Mr. Baker just held up, this one that	03:21:22	5	THE VIDEOGRAPHER: If you have a PDF,	03:24:31
6	starts with 200.	03:21:27	6	you should be able to just drag it into the chat,	03:24:32
7	MR. LEE: Okay. It's a three-page --	03:21:28	7	and we'll be able to download it that way.	03:24:36
8	three-page email, right?	03:21:30	8	MS. BERTRAM: I'd like to share -- oh,	03:24:38
9	MS. BERTRAM: That's correct.	03:21:31	9	I see, share my screen.	03:24:40
10	MR. LEE: Or a email and a chart,	03:21:32	10	THE VIDEOGRAPHER: No. Actually,	03:24:42
11	right?	03:21:34	11	drag -- if you drag the document into the Zoom	03:24:44
12	MS. BERTRAM: Correct.	03:21:34	12	chat, we'll be able to download it onto our	03:24:47
13	MR. LEE: Can you just send it to him?	03:21:35	13	computers.	03:24:50
14	MS. BERTRAM: It's right in the binder	03:21:38	14	MS. BERTRAM: I can't drag it given the	03:25:36
15	he was just holding up.	03:21:40	15	system that I have them in, the litigation	03:25:40
16	THE WITNESS: I -- I can show --	03:21:40	16	manager --	03:25:40
17	MS. BERTRAM: This binder right here.	03:21:42	17	MR. LEE: You know what? If -- if Jill	03:25:40
18	I have a identical copy to what he has.	03:21:43	18	were here, she'd be able to pop it up on the	03:25:41
19	THE WITNESS: That's --	03:21:43	19	screen. Let me see -- but I don't have it	03:25:44
20	MS. BERTRAM: That's not the right one.	03:21:47	20	digitally. You're -- this is the Francis/Earl	03:25:46
21	That's an old version. There should -- there's one	03:21:49	21	Baker email exchange of July 16; subject matter:	03:25:51
22	starting at -- at 200.	03:21:53	22	Cost Savings in Cutter, right? That's what	03:25:57
23	THE WITNESS: The other one that I have	03:21:57	23	you're --	03:26:06
24	says "Plaintiff's Exhibits" starts with 251 -- or	03:21:59	24	MS. BERTRAM: Right.	03:26:11
25	281.	03:22:02	25	MR. LEE: Can you, like, show it up on	03:26:11
541			543		
1	MS. BERTRAM: That's one that goes in	03:22:03	1	the screen, like, in your -- with your hands and	03:26:12
2	the middle between those two because they don't	03:22:05	2	maybe ask him? Because I don't mind.	03:26:14
3	match up.	03:22:12	3	THE VIDEOGRAPHER: Ms. Bertram --	03:26:16
4	THE WITNESS: There is not another one	03:22:13	4	MS. BERTRAM: I'd like to share to	03:26:16
5	that says "Plaintiff's Exhibits" other than those	03:22:14	5	Zoom, but I was told I shouldn't do that.	03:26:19
6	two. I have two that say "Plaintiff's Exhibits."	03:22:16	6	THE VIDEOGRAPHER: Would -- would you	03:26:22
7	The other one says "Smith & Wesson Exhibits,"	03:22:19	7	like to go off the record for a moment and we	03:26:22
8	"Smith & Wesson Exhibits," "Smith & Wesson	03:22:22	8	can --	03:26:23
9	Exhibits," and one that says "Baker's Text	03:22:24	9	MS. BERTRAM: No.	03:26:23
10	Message." Those are the ones provided.	03:22:28	10	MR. LEE: Yeah. Sure.	03:26:23
11	MS. BERTRAM: Okay. Well, we sent you	03:22:30	11	MS. BERTRAM: How is that going to fix	03:26:23
12	three shipments of them, and I asked that they all	03:22:33	12	things? I don't mind this being on the record.	03:26:26
13	be available. But I'll -- I'll go ahead and	03:22:35	13	THE VIDEOGRAPHER: You can try sharing	03:26:26
14	publish this, if I can. It will just take me a	03:22:37	14	your screen. I just wanted to make sure that it	03:26:27
15	minute to pull it up.	03:22:43	15	didn't affect my video when you did that. But if	03:26:29
16	MR. LEE: While you're doing that, I'm	03:22:48	16	you would like to do that on the record, we can.	03:26:33
17	going to take a quick run.	03:22:49	17	MR. LEE: Oh --	03:26:34
18	MS. BERTRAM: Okay.	03:22:52	18	THE VIDEOGRAPHER: I'm sorry?	03:26:34
19	MR. LEE: It will take less than two	03:22:52	19	MR. LEE: -- I see. Okay. Hold on.	03:26:35
20	minutes.	03:22:54	20	If -- if -- if Connie -- because it's such a -- you	03:26:35
21	THE VIDEOGRAPHER: Shall we go off the	03:22:54	21	know, it's a two -- two -- two-page email --	03:26:38
22	record?	03:22:55	22	two-page email with a little attachment or a	03:26:39
23	MR. LEE: You don't have to. Just wait	03:22:56	23	one-page -- yeah, it's a page -- two-page email	03:26:42
24	until I get back. I'm just going to put it on mute	03:22:58	24	with -- if Connie shows it -- like, holds it up --	03:26:44
25	and just run to the boys' room.	03:23:01	25	holds the email up on the screen, will it be caught	03:26:47

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald - Vol. III

October 10, 2020

17 (Pages 544 to 547)

544	546
<p>1 on the video or no, or is it -- 03:26:52</p> <p>2 THE VIDEOGRAPHER: It will not be 03:26:54</p> <p>3 legible. 03:26:56</p> <p>4 MR. LEE: Oh. 03:26:56</p> <p>5 THE VIDEOGRAPHER: Ms. Bertram, you can 03:26:57</p> <p>6 try sharing your screen of the -- of the document. 03:26:58</p> <p>7 THE WITNESS: I can see that. 03:27:14</p> <p>8 MS. BERTRAM: Do you see it? 03:27:15</p> <p>9 THE WITNESS: Yes. 03:27:17</p> <p>10 BY MS. BERTRAM: 03:27:18</p> <p>11 Q. Okay. Exhibit 225 is the first email. 03:27:18</p> <p>12 It's a July 16, 2014, email from you to 03:27:22</p> <p>13 Mr. Francis, correct? 03:27:27</p> <p>14 A. Yes. 03:27:28</p> <p>15 Q. And was this the first time that 03:27:31</p> <p>16 Mr. Francis provided to you a draft of the cutter 03:27:33</p> <p>17 savings chart? 03:27:37</p> <p>18 A. I can't be sure if it was the first 03:27:40</p> <p>19 time or not because we -- he shared a couple of 03:27:42</p> <p>20 copies, I think. But this is one place where he 03:27:46</p> <p>21 shared a copy. 03:27:51</p> <p>22 Q. He says: Take a look at the 03:27:56</p> <p>23 spreadsheet. I tried to summarize your numbers, 03:27:58</p> <p>24 correct? 03:28:00</p> <p>25 A. Yes. 03:28:01</p>	<p>1 proceedings from 3:29 p.m. to 3:40 p.m.) 03:33:29</p> <p>2 * * * 03:40:44</p> <p>3 THE VIDEOGRAPHER: Going on the record 03:40:44</p> <p>4 at 3:40. 03:40:48</p> <p>5 BY MS. BERTRAM: 03:40:51</p> <p>6 Q. Do you see the exhibit? 03:41:03</p> <p>7 A. Yes. My -- yes, I do. 03:41:04</p> <p>8 MS. BERTRAM: Okay. So, Cindy, could 03:41:07</p> <p>9 you read back the question that was pending when 03:41:10</p> <p>10 Mr. Baker froze up. 03:41:12</p> <p>11 THE WITNESS: And, Connie, for your -- 03:41:21</p> <p>12 your record, my wife just found the book that you 03:41:21</p> <p>13 were -- 03:41:21</p> <p>14 BY MS. BERTRAM: 03:41:21</p> <p>15 Q. Okay. 03:41:21</p> <p>16 A. -- speaking of. 03:41:24</p> <p>17 Q. Okay. Good. So if you could open it 03:41:25</p> <p>18 up to 225. 03:41:28</p> <p>19 THE REPORTER: Are you ready for the 03:41:28</p> <p>20 question? The last --</p> <p>21 MS. BERTRAM: Let Mr. Baker get to the 03:41:28</p> <p>22 exhibit first.</p> <p>23 THE WITNESS: I'm -- I'm there. 03:41:28</p> <p>24 MS. BERTRAM: Okay. Good. 03:41:54</p> <p>25 (The following question was read back: 03:41:54</p>
545	547
<p>1 Q. And the email below that, you had sent 03:28:02</p> <p>2 to Mr. Francis on July 15, 2014, right? 03:28:05</p> <p>3 A. Yes. Or 15. 03:28:11</p> <p>4 Q. And these are the numbers that you used 03:28:15</p> <p>5 to generate the analysis that you have described to 03:28:17</p> <p>6 Mr. Francis, correct? 03:28:20</p> <p>7 THE VIDEOGRAPHER: I believe 03:28:34</p> <p>8 Mr. Baker's video is locked up. 03:28:35</p> <p>9 MS. BERTRAM: Okay. I thought he was 03:28:37</p> <p>10 reading. 03:28:39</p> <p>11 MR. LEE: Earl, can you hear us? 03:28:39</p> <p>12 Evidently not. 03:28:51</p> <p>13 THE VIDEOGRAPHER: Would you like to go 03:28:52</p> <p>14 off the record and troubleshoot this? 03:28:53</p> <p>15 MS. BERTRAM: Okay. 03:28:55</p> <p>16 MR. LEE: Yeah. Do you -- do you want 03:28:55</p> <p>17 Mr. Baker's phone number so you can call him up and 03:28:56</p> <p>18 sort of guide him through this? 03:28:59</p> <p>19 MS. BERTRAM: That would be a good 03:29:00</p> <p>20 idea. 03:29:01</p> <p>21 MR. LEE: Yeah. 03:29:01</p> <p>22 THE VIDEOGRAPHER: Going off the record 03:29:01</p> <p>23 at 3:29. 03:29:02</p> <p>24 * * * 03:29:04</p> <p>25 (Whereupon, there was a recess in the 03:29:04</p>	<p>1 Q: And these are the numbers that you 03:41:54</p> <p>2 used to generate the analysis that you have 03:41:54</p> <p>3 described to Mr. Francis, correct?) 03:41:55</p> <p>4 THE WITNESS: Yes. 03:41:55</p> <p>5 BY MS. BERTRAM: 03:41:56</p> <p>6 Q. And do you have a recollection of 03:41:58</p> <p>7 providing any production and cost savings numbers 03:42:01</p> <p>8 to Mr. Francis before your email of July 15, 2014? 03:42:05</p> <p>9 A. I believe I did. 03:42:11</p> <p>10 THE VIDEOGRAPHER: Ms. Bertram, sorry 03:42:16</p> <p>11 to interrupt. Can you unshare your screen? I 03:42:18</p> <p>12 believe it's affecting Mr. Baker's video. 03:42:21</p> <p>13 MS. BERTRAM: Oh, that's a good point. 03:42:24</p> <p>14 We don't need it anymore. 03:42:25</p> <p>15 THE VIDEOGRAPHER: Thank you. 03:42:26</p> <p>16 MS. BERTRAM: Okay. 03:42:27</p> <p>17 BY MS. BERTRAM: 03:42:28</p> <p>18 Q. And did you share any -- strike that. 03:42:33</p> <p>19 Did you provide to Mr. Francis any 03:42:40</p> <p>20 production and cost savings numbers before your 03:42:43</p> <p>21 July 15 email? 03:42:48</p> <p>22 MR. LEE: Objection to the form of the 03:42:50</p> <p>23 question. 03:42:51</p> <p>24 But you may answer. 03:42:52</p> <p>25 THE WITNESS: I believe I did. 03:42:54</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

<p style="text-align: right;">548</p> <p>1 BY MS. BERTRAM: 03:42:57</p> <p>2 Q. Do you specifically recall any 03:42:58</p> <p>3 documents that you provided to him or any numbers 03:42:59</p> <p>4 that you provided to him? 03:43:01</p> <p>5 <b>A. We worked together on the pitch board</b> 03:43:03</p> <p>6 <b>quite extensively. So there would have been</b> 03:43:07</p> <p>7 <b>numbers that were on the pitch board that were</b> 03:43:12</p> <p>8 <b>shared with him. And then he also had access to</b> 03:43:16</p> <p>9 <b>them, so -- that would be my recollection.</b> 03:43:18</p> <p>10 Q. Do you have any reason to believe that 03:43:22</p> <p>11 he accessed the company's databases to confirm your 03:43:23</p> <p>12 numbers between July 15, 2014, and July 16, 2014, 03:43:28</p> <p>13 to double-check your numbers? 03:43:34</p> <p>14 MR. LEE: Objection to the form of the 03:43:36</p> <p>15 question. 03:43:37</p> <p>16 But you may answer. 03:43:37</p> <p>17 THE WITNESS: Could you ask that again? 03:43:39</p> <p>18 BY MS. BERTRAM: 03:43:42</p> <p>19 Q. Do you have any reason to believe that 03:43:42</p> <p>20 Mr. Francis accessed the company's databases or 03:43:44</p> <p>21 records to confirm your numbers between receiving 03:43:48</p> <p>22 your email on July 15, 2014, at 8:50 p.m. and 03:43:51</p> <p>23 sending the spreadsheet to you on July 16, 2014, at 03:43:55</p> <p>24 11:17 a.m.? 03:43:59</p> <p>25 MR. LEE: Objection. 03:44:01</p>	<p style="text-align: right;">550</p> <p>1 question. 03:45:07</p> <p>2 But you may answer. 03:45:07</p> <p>3 Are we on the one, two -- third 03:45:08</p> <p>4 paragraph down in that July 15 -- okay. 03:45:10</p> <p>5 THE WITNESS: My recollection, not 03:45:14</p> <p>6 having the other sheets in front of me, but if you 03:45:16</p> <p>7 look at the pitch board in the production monthly 03:45:19</p> <p>8 of the department, and you take those numbers 03:45:24</p> <p>9 monthly and add them up, it comes to that number. 03:45:29</p> <p>10 So that would be in those -- those 03:45:32</p> <p>11 other documents that show, like, a bar graph on 03:45:34</p> <p>12 them. It's just the adding of each month together 03:45:38</p> <p>13 came up with a total. 03:45:42</p> <p>14 BY MS. BERTRAM: 03:45:43</p> <p>15 Q. And was that for the annual year or for 03:45:43</p> <p>16 the fiscal year? 03:45:46</p> <p>17 <b>A. I believe that all the numbers on that</b> 03:45:46</p> <p>18 <b>were on fiscal year.</b> 03:45:49</p> <p>19 Q. And in the last paragraph, you mention 03:45:50</p> <p>20 a 33 percent quality improvement. 03:45:54</p> <p>21 <b>A. Uh-huh.</b> 03:45:57</p> <p>22 Q. Now, that measure had changed during 03:45:58</p> <p>23 your employment, correct? 03:46:00</p> <p>24 <b>A. Yes.</b> 03:46:01</p> <p>25 Q. When did it change? 03:46:01</p>
<p style="text-align: right;">549</p> <p>1 THE WITNESS: Yes. I have every reason 03:44:02</p> <p>2 to believe, Bob being who he is and having access 03:44:03</p> <p>3 to these numbers, that he wouldn't have published 03:44:06</p> <p>4 anything without -- without verifying it. 03:44:09</p> <p>5 That's -- you said, do I have any reason to 03:44:14</p> <p>6 believe? Yeah. Knowing Bob, I believe it was all 03:44:16</p> <p>7 checked. 03:44:20</p> <p>8 BY MS. BERTRAM: 03:44:20</p> <p>9 Q. Do you have any personal knowledge that 03:44:20</p> <p>10 he checked those databases or numbers? 03:44:21</p> <p>11 <b>A. No, I don't.</b> 03:44:23</p> <p>12 Q. Let me ask you a couple of questions 03:44:25</p> <p>13 about your email from July 15. In the second line, 03:44:26</p> <p>14 you talk about cutter production, and you said it 03:44:31</p> <p>15 was 5,701 per month. That included both regrinds 03:44:37</p> <p>16 and new tools, correct? 03:44:41</p> <p>17 <b>A. Yes.</b> 03:44:44</p> <p>18 Q. And -- 03:44:44</p> <p>19 <b>A. I think so. I'm sorry.</b> 03:44:45</p> <p>20 Q. And if you go down two more paragraphs, 03:44:47</p> <p>21 it says: Total Smith &amp; Wesson grind value of 03:44:50</p> <p>22 6.4 million divided by 98,119 tools. And then you 03:44:54</p> <p>23 provide a computation there. What is the 98,119? 03:44:57</p> <p>24 What does that number reflect? 03:45:02</p> <p>25 MR. LEE: Objection to the form of the 03:45:05</p>	<p style="text-align: right;">551</p> <p>1 <b>A. I can't tell you the exact number, but</b> 03:46:03</p> <p>2 <b>I -- going back to that sheet, I'm sure the quality</b> 03:46:08</p> <p>3 <b>sheet that was on the pitch board, it would tell</b> 03:46:11</p> <p>4 <b>you when that changed.</b> 03:46:14</p> <p>5 Q. And you adopted procedures where -- 03:46:17</p> <p>6 where you tested tools, correct? 03:46:20</p> <p>7 <b>A. Yes. Uh-huh.</b> 03:46:22</p> <p>8 Q. And did you test both new cutter tools 03:46:23</p> <p>9 and regrinds? 03:46:27</p> <p>10 <b>A. Yes.</b> 03:46:28</p> <p>11 Q. Okay. And for the new tools, exactly 03:46:29</p> <p>12 what measurements did you use in assessing the 03:46:32</p> <p>13 quality of new tools? 03:46:35</p> <p>14 <b>A. There's a tool that checks the -- the</b> 03:46:36</p> <p>15 <b>angles that are produced on the tool, both primary</b> 03:46:42</p> <p>16 <b>and secondary. And the operators were required to</b> 03:46:46</p> <p>17 <b>check one tool from each lot and then record it on</b> 03:46:51</p> <p>18 <b>a sheet. And then if the lot size was large</b> 03:46:56</p> <p>19 <b>enough, they might be required to check, let's say,</b> 03:47:00</p> <p>20 <b>every hundred pieces or something.</b> 03:47:04</p> <p>21 I don't -- I -- I don't know the 03:47:07</p> <p>22 specifics number requirement, but that's how the 03:47:08</p> <p>23 quality process was written, that they check one 03:47:13</p> <p>24 from each lot. If it was a larger lot, a few times 03:47:16</p> <p>25 within that lot. 03:47:19</p>

<p style="text-align: right;">552</p> <p>1 Q. And what was the name of the tool that 03:47:22</p> <p>2 was used to test quality? 03:47:24</p> <p>3 A. It's -- it was produced by Weldon Tool 03:47:25</p> <p>4 Company, but I think it was -- it was just called a 03:47:31</p> <p>5 geometry checker. But they also had the ability 03:47:35</p> <p>6 to -- we had a tool that had its own room that was 03:47:38</p> <p>7 made by Walter Company that you would load the tool 03:47:41</p> <p>8 in, and it would give you a computer readout of 03:47:47</p> <p>9 everything on that tool, angularity, runout, all 03:47:50</p> <p>10 those issues. 03:47:54</p> <p>11 Q. And for each tool that was tested out 03:47:55</p> <p>12 of the lot, did you use both the -- the tool that 03:48:00</p> <p>13 tested angle and then also the -- the Weldon 03:48:05</p> <p>14 machine? 03:48:09</p> <p>15 A. No, we -- we didn't -- we didn't -- 03:48:10</p> <p>16 MR. LEE: Object to the form of the 03:48:12</p> <p>17 question. Misstates the witness's prior testimony. 03:48:13</p> <p>18 But you may answer. 03:48:16</p> <p>19 I think he said "Walter," not "Weldon." 03:48:17</p> <p>20 But it doesn't matter. 03:48:21</p> <p>21 THE WITNESS: We -- we did have a 03:48:22</p> <p>22 Weldon machine and a Walter. I mentioned both. 03:48:24</p> <p>23 So the issue with the -- which machine 03:48:27</p> <p>24 they used, we didn't dictate to them which of the 03:48:30</p> <p>25 two machines they used. Some people had the 03:48:33</p>	<p style="text-align: right;">554</p> <p>1 to the Walton [sic] machine? 03:49:54</p> <p>2 A. I can't really say. It was up to the 03:49:55</p> <p>3 operator. I didn't dictate which they used, just 03:49:58</p> <p>4 that they had checked the angles by one method or 03:50:01</p> <p>5 the other. 03:50:05</p> <p>6 Q. And how were the results of the testing 03:50:06</p> <p>7 reported by the machine operators? 03:50:09</p> <p>8 A. We -- we had a quality sheet that they 03:50:11</p> <p>9 had recorded it on, and -- which actually evolved a 03:50:15</p> <p>10 little. So there were a couple versions of it. 03:50:21</p> <p>11 Q. And how many angles did the Walton 03:50:24</p> <p>12 [sic] machine test? 03:50:31</p> <p>13 A. The Walter? The Walter -- 03:50:32</p> <p>14 Q. Walter. Sorry. 03:50:33</p> <p>15 A. The Walter checked many. I'm saying 03:50:35</p> <p>16 50, a hundred. I don't know. A lot of angles; 03:50:37</p> <p>17 whereas, the Weldon only checked the primary and 03:50:40</p> <p>18 secondary clearance angles of -- of the end and the 03:50:46</p> <p>19 side. 03:50:50</p> <p>20 Q. Let's go to the third page of 03:50:51</p> <p>21 Exhibit 225. And this was the Cost -- Cutter Cost 03:50:54</p> <p>22 Savings Analysis that Mr. Francis provided to you, 03:50:59</p> <p>23 correct? 03:51:01</p> <p>24 A. Yes. 03:51:02</p> <p>25 Q. Was there ever any other version of 03:51:02</p>
<p style="text-align: right;">553</p> <p>1 ability to use either. All I said was I wanted a 03:48:36</p> <p>2 check to be done, and they could do it -- they 03:48:40</p> <p>3 could determine their figures based on either 03:48:43</p> <p>4 method, just as long as they recorded the method -- 03:48:47</p> <p>5 recorded what they got on the tool on the quality 03:48:52</p> <p>6 sheet. 03:48:55</p> <p>7 BY MS. BERTRAM: 03:48:56</p> <p>8 Q. And how many angles did the Weldon 03:48:57</p> <p>9 machine test? 03:49:00</p> <p>10 A. Hundreds, maybe. 03:49:03</p> <p>11 Q. For each individual tool? 03:49:04</p> <p>12 A. Yeah, it did hundreds. 03:49:06</p> <p>13 Q. How many -- how many angles did it 03:49:08</p> <p>14 test? 03:49:10</p> <p>15 A. Primary, secondary angle on the 03:49:11</p> <p>16 circumference, the helix angle, the primary and 03:49:15</p> <p>17 secondary on the end, the gash angle. So it -- 03:49:19</p> <p>18 it -- it may be an exaggeration to say hundreds, 03:49:24</p> <p>19 but it -- probably 20, 30 per tool. 03:49:28</p> <p>20 The Weldon machine only checked the 03:49:31</p> <p>21 primary and secondary clearance angles. So it 03:49:34</p> <p>22 checked less than the other one -- than the Walter 03:49:39</p> <p>23 machine. 03:49:42</p> <p>24 Q. And how many -- what percentage of the 03:49:45</p> <p>25 tools were tested by the Weldon machine as opposed 03:49:51</p>	<p style="text-align: right;">555</p> <p>1 this analysis, to your knowledge? 03:51:05</p> <p>2 A. Yes. This was the only version I had. 03:51:07</p> <p>3 You notice where it says "Cutter" incorrectly? 03:51:11</p> <p>4 Q. Yes. 03:51:14</p> <p>5 A. That's the one that I had that 03:51:15</p> <p>6 Mr. Francis provided to me. He later presented his 03:51:18</p> <p>7 version of this to the company where that 03:51:22</p> <p>8 correction has been changed. So I now have a 03:51:27</p> <p>9 version with the corrected spelling, but I know 03:51:34</p> <p>10 which version came to me through production from 03:51:38</p> <p>11 Smith &amp; Wesson because it's spelled correctly, 03:51:41</p> <p>12 whereas the only version I had was a preliminary 03:51:44</p> <p>13 version that is misspelled. 03:51:48</p> <p>14 Q. And so this is the preliminary version 03:51:52</p> <p>15 that's on the third page of Exhibit 225, right? 03:51:55</p> <p>16 A. Yes. 03:51:58</p> <p>17 Q. Okay. If you could turn to 03:51:58</p> <p>18 Exhibit 233.1. 03:52:07</p> <p>19 A. I hate to say this -- 03:52:23</p> <p>20 MR. LEE: What was the -- what was 03:52:23</p> <p>21 the -- what was the number, again? 03:52:25</p> <p>22 MS. BERTRAM: 233.1 of the plaintiff's 03:52:26</p> <p>23 exhibits. 03:52:28</p> <p>24 MR. LEE: 233.1. Okay. 03:52:29</p> <p>25 THE WITNESS: I've got 232, and the 03:52:38</p>



Baker, Earl Donald - Vol. III

October 10, 2020

20 (Pages 556 to 559)

	556		558
1	next page is 234.	03:52:41	
2	BY MS. BERTRAM:	03:52:47	
3	Q. It is probably --	03:52:47	
4	<b>A. Then it goes to 236.</b>	03:52:47	
5	BY MS. BERTRAM:	03:52:47	
6	Q. -- the other one that says "Plaintiff's	03:52:49	
7	Exhibits." Let me find that.	03:52:52	
8	<b>A. There's a 236 that has the same -- the</b>	03:52:53	
9	<b>finished version of that. Is that what you're</b>	03:52:56	
10	<b>looking for?</b>	03:52:59	
11	Q. Which one are you referring to?	03:52:59	
12	<b>A. 236 is the Cutter Cost Savings Analysis</b>	03:53:01	
13	<b>finished version with the corrected spelling.</b>	03:53:05	
14	Q. Okay. So hold on. 236?	03:53:08	
15	<b>A. Yes.</b>	03:53:16	
16	MR. LEE: The one -- the one that	03:53:17	
17	Connie was looking for, 232, is --	03:53:19	
18	THE WITNESS: She wanted 233.	03:53:24	
19	MR. LEE: Oh, 233 --	03:53:24	
20	THE WITNESS: There is no --	03:53:26	
21	MR. LEE: I see. 233.1 is what she	03:53:26	
22	wanted, and that one --	03:53:30	
23	MS. BERTRAM: I'll find that one	03:53:31	
24	because it's in the documents we sent to Mr. Baker.	03:53:33	
25	But he mentioned 236.	03:53:36	
	557		559
1	MR. LEE: Okay. I'm looking at my	03:53:38	
2	version. The 233.1 still has the misspelling,	03:53:40	
3	C-U-U-T-E-R, and then 236 has the corrected	03:53:44	
4	spelling, C-U-T-T-E-R.	03:53:49	
5	MS. BERTRAM: Right. Right. That's	03:53:51	
6	what he was pointing out. So I want to talk for --	03:53:52	
7	with him for a minute about Exhibit 236 since he	03:53:54	
8	pointed it out.	03:53:58	
9	BY MS. BERTRAM:	03:54:02	
10	Q. This is the more final version; is that	03:54:02	
11	right, Mr. Baker?	03:54:04	
12	<b>A. Yes.</b>	03:54:05	
13	Q. And that was provided to you by	03:54:05	
14	Mr. Francis on July 20, 2014?	03:54:07	
15	<b>A. No. The final version I only received</b>	03:54:09	
16	<b>through production from Smith &amp; Wesson. He never</b>	03:54:13	
17	<b>provided me the final version.</b>	03:54:16	
18	Q. Okay. But he did provide to you the	03:54:21	
19	version that's attached to Exhibit 236, right?	03:54:23	
20	<b>A. No. I -- I -- the only one I ever got</b>	03:54:26	
21	<b>was the incorrect spelling version.</b>	03:54:30	
22	Q. So let's -- let's look at Exhibit 236.	03:54:36	
23	Let's look at the email itself. And this is	03:54:38	
24	from -- you know, the -- the first page is marked	03:54:45	
25	M783, right?	03:54:49	
1	<b>A. Yes.</b>		03:54:59
2	Q. And that is an email that Mr. Francis		03:54:59
3	sent to you on July 20th, 2014, right?		03:55:01
4	<b>A. Yes.</b>		03:55:03
5	Q. And it says that there's two		03:55:04
6	attachments: Cutter Cost Saving Kaizen, Lean		03:55:08
7	Management Results in F1 -- FY14 and an FY14.xls.		03:55:15
8	Is the next page of that exhibit, which		03:55:24
9	is stamped 784, the attachment to the exhibit -- to		03:55:26
10	the email on Page 236 -- I'm sorry -- on		03:55:33
11	Exhibit 236?		03:55:38
12	<b>A. What was your question?</b>		03:55:40
13	Q. Let me just state it again.		03:55:42
14	Is the document marked 784, which is		03:55:48
15	the second page of Plaintiff's Exhibit 236, the		03:55:53
16	attachment to the July 20, 2014, email that		03:55:56
17	Mr. Francis sent to you?		03:56:00
18	<b>A. I do not believe so.</b>		03:56:01
19	Q. And that's because the spelling is		03:56:04
20	corrected; is that right?		03:56:09
21	<b>A. Yes.</b>		03:56:10
22	Q. And when was the first time that you		03:56:11
23	saw the cost savings analysis with the spelling		03:56:15
24	corrected?		03:56:18
25	<b>A. I believe it was through production</b>		03:56:19
1	<b>after the -- we had made the filing with OSHA. And</b>		03:56:25
2	<b>we received it in production from Smith &amp; Wesson.</b>		03:56:32
3	Q. Now, did you find Exhibit 233.1?		03:56:36
4	<b>A. No. Again, in the book that you're --</b>		03:56:41
5	<b>that I'm in now with the feather, "Plaintiff's</b>		03:56:56
6	<b>Exhibit," it goes from 232.2 to 234. There is no</b>		03:56:59
7	<b>233, if it's chronologically listed.</b>		03:57:05
8	Q. It's in this document that begins with		03:57:19
9	Exhibit 200 -- this set of exhibits, which -- which		03:57:22
10	we've referenced already in this deposition.		03:57:28
11	<b>A. Okay. It's in a different book, then,</b>		03:57:30
12	<b>than this one?</b>		03:57:33
13	Q. It's in this book that has the cover		03:57:34
14	just like this, beginning with Exhibit 200.		03:57:36
15	<b>A. Okay. I'm looking in this book. There</b>		03:58:02
16	<b>is no -- it goes straight from --</b>		03:58:05
17	Q. I know that.		03:58:08
18	<b>A. -- 232 --</b>		03:58:08
19	Q. Just set -- set that aside, Mr. Baker.		03:58:09
20	I know it's not in there.		03:58:10
21	<b>A. Okay.</b>		03:58:11
22	Q. It's the original set of plaintiff's		03:58:12
23	exhibits that I sent to you prior to the deposition		03:58:14
24	on -- it -- it was from the first day of your		03:58:17
25	deposition. And you've -- you've -- you've waved		03:58:19

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



560	562
<p>1 those around. I know you have them. And 03:58:23</p> <p>2 there's Exhibit -- 03:58:25</p> <p>3 <b>A. Okay. So tell me what book and what 03:58:25</b></p> <p>4 <b>number. I told you there -- 03:58:28</b></p> <p>5 Q. I just told you, and I'll tell you 03:58:30</p> <p>6 again. Plaintiff -- the original set of 03:58:32</p> <p>7 plaintiff's exhibits that I sent to you prior to 03:58:34</p> <p>8 the first day of your deposition. And if you turn 03:58:36</p> <p>9 to 233.1, it is in there. It's a three-volume set, 03:58:39</p> <p>10 which does not have a feather, I don't think. 03:58:45</p> <p>11 <b>A. You'll have to be more specific or 03:59:43</b></p> <p>12 <b>share it because this book, those -- has a tab that 03:59:45</b></p> <p>13 <b>says 233. The very first page is 232.2, and it 03:59:47</b></p> <p>14 <b>goes up through -- the next page is 251, 03:59:52</b></p> <p>15 <b>Exhibit 251. 03:59:57</b></p> <p>16 Q. Hold up what you're referencing. 03:59:58</p> <p>17 <b>A. (Witness complied.) 03:59:58</b></p> <p>18 Q. I was looking at the tabs. 04:00:07</p> <p>19 <b>A. The tabs say -- it goes from 233 -- 04:00:08</b></p> <p>20 <b>there's a 233 tab -- 04:00:13</b></p> <p>21 MS. BERTRAM: I -- I understand. You 04:00:15</p> <p>22 don't have to tell me what tabs are around it. If 04:00:16</p> <p>23 you can't find the exhibit, I'll -- I'll share it 04:00:18</p> <p>24 with you. 04:00:20</p> <p>25 THE WITNESS: All right. 04:00:20</p>	<p>1 July 16, 2014, email from you to 04:03:09</p> <p>2 ron_88@comcast.net. 04:03:16</p> <p>3 <b>A. Okay. 04:03:17</b></p> <p>4 Q. Is that right? 04:03:18</p> <p>5 <b>A. Yes. 04:03:20</b></p> <p>6 Q. And at one point, that was Mr. -- 04:03:22</p> <p>7 Mr. O'Brien's email, right? 04:03:25</p> <p>8 <b>A. Yes. But I don't know for certain who 04:03:27</b></p> <p>9 <b>nema64 is. 04:03:41</b></p> <p>10 THE VIDEOGRAPHER: Sorry to interrupt, 04:03:43</p> <p>11 Ms. Bertram. 04:03:45</p> <p>12 MS. BERTRAM: Uh-huh. 04:03:45</p> <p>13 THE VIDEOGRAPHER: Just to let you 04:03:46</p> <p>14 know, when you're screen-sharing, it does cause 04:03:46</p> <p>15 some lag in Mr. Baker's video. I just wanted to 04:03:49</p> <p>16 make you aware of that. Thank you. 04:03:52</p> <p>17 BY MS. BERTRAM: 04:03:59</p> <p>18 Q. And during the period that you were 04:04:09</p> <p>19 coordinating with Mr. Francis about the cost -- the 04:04:11</p> <p>20 cutter savings analysis, you were consulting with 04:04:16</p> <p>21 counsel; is that right? 04:04:19</p> <p>22 MR. LEE: Objection to the form of the 04:04:19</p> <p>23 question. 04:04:21</p> <p>24 But you may answer. 04:04:24</p> <p>25 THE WITNESS: I don't believe so. 04:04:25</p>
561	563
<p>1 BY MS. BERTRAM: 04:01:36</p> <p>2 Q. I've shared with you Exhibit 233.1. 04:01:37</p> <p>3 And let's first look at the email at the top. 04:01:40</p> <p>4 Actually, let's go down to the second email. This 04:01:44</p> <p>5 is a July 16, 2014, email that you sent to 04:01:53</p> <p>6 Mr. Debney, the CEO of Smith &amp; Wesson, right? 04:01:56</p> <p>7 <b>A. Yes. 04:01:59</b></p> <p>8 Q. And you represent to the CEO: I have 04:02:00</p> <p>9 included for your viewing a copy of data of cost 04:02:04</p> <p>10 savings to Smith &amp; Wesson accomplished in my first 04:02:06</p> <p>11 year, correct? 04:02:09</p> <p>12 <b>A. Yes. 04:02:09</b></p> <p>13 Q. And is this the only cost -- cost 04:02:10</p> <p>14 saving analysis that you provided to Mr. Debney? 04:02:17</p> <p>15 <b>A. I believe so, yes. 04:02:19</b></p> <p>16 Q. And I'm going to take you back up to 04:02:21</p> <p>17 the top of Exhibit 233.1. This is a July 18, 2014, 04:02:25</p> <p>18 email from you to someone with the email address 04:02:30</p> <p>19 nema64@nema@yahoo -- or .nema@yahoo.com. Whose 04:02:34</p> <p>20 email address is this? 04:02:42</p> <p>21 <b>A. I don't have nema64 on mine, but I 04:02:47</b></p> <p>22 <b>would -- I can only guess that it was Ron O'Brien, 04:02:52</b></p> <p>23 <b>but I don't know that for certain. Ron changed his 04:03:01</b></p> <p>24 <b>emails quite a bit. 04:03:05</b></p> <p>25 Q. Okay. And the email below that is a 04:03:07</p>	<p>1 BY MS. BERTRAM: 04:04:30</p> <p>2 Q. Is there any other reason that you'd be 04:04:30</p> <p>3 meeting with counsel other than your potential 04:04:32</p> <p>4 dispute with Smith &amp; Wesson? 04:04:35</p> <p>5 MR. LEE: Objection to the form of the 04:04:37</p> <p>6 question. 04:04:38</p> <p>7 But you may answer. 04:04:39</p> <p>8 THE WITNESS: I had one consultation 04:04:41</p> <p>9 with an attorney, and she didn't know what 04:04:46</p> <p>10 Sarbanes-Oxley was. So I terminated her, and then 04:04:52</p> <p>11 I got another attorney. The time frame of which 04:04:58</p> <p>12 attorney, whether -- my -- it's my belief that that 04:05:02</p> <p>13 was in between the two attorneys. So I had an 04:05:07</p> <p>14 attorney prior to that, but it lasted one meeting. 04:05:12</p> <p>15 So I don't believe I was with counsel at this time. 04:05:16</p> <p>16 BY MS. BERTRAM: 04:05:23</p> <p>17 Q. Look at Smith &amp; Wesson Exhibit 70. 04:05:28</p> <p>18 It's in the third binder of exhibits. 04:05:31</p> <p>19 <b>A. What would the title be on the front? 04:05:44</b></p> <p>20 <b>"Plaintiff's Exhibits"? 04:05:47</b></p> <p>21 MR. LEE: No. It would be -- 04:05:51</p> <p>22 BY MS. BERTRAM: 04:05:51</p> <p>23 Q. "Smith &amp; Wesson Exhibits." 04:05:51</p> <p>24 MR. LEE: -- "Defendant Smith &amp; Wesson 04:05:52</p> <p>25 Exhibits." 04:05:52</p>

Baker, Earl Donald - Vol. III

October 10, 2020

22 (Pages 564 to 567)

564	566
<p>1 THE WITNESS: Okay. And what number? 04:06:04</p> <p>2 70? 04:06:07</p> <p>3 BY MS. BERTRAM: 04:06:08</p> <p>4 Q. 70. 04:06:08</p> <p>5 MR. LEE: Just to make sure that I have 04:06:14</p> <p>6 the right one, Connie, is this the one that says: 04:06:15</p> <p>7 Cost Savings of Increased Production in Cutter? 04:06:18</p> <p>8 MS. BERTRAM: Yes. 04:06:21</p> <p>9 THE WITNESS: Yes. 04:06:23</p> <p>10 MR. LEE: Okay. 04:06:23</p> <p>11 THE WITNESS: Got it. 04:06:23</p> <p>12 BY MS. BERTRAM: 04:06:23</p> <p>13 Q. Okay. Focusing on this first page of 04:06:24</p> <p>14 Exhibit 70, are you familiar with that document? 04:06:26</p> <p>15 A. Yes. 04:06:30</p> <p>16 Q. What is it? 04:06:31</p> <p>17 A. We had to provide cost savings to 04:06:32</p> <p>18 Mr. Fontaine as a -- as a part of our fiscal year 04:06:40</p> <p>19 goals. They always tried to, you know, get cost 04:06:47</p> <p>20 savings. So I produced that and gave him a copy. 04:06:52</p> <p>21 But this was -- I don't know. It would have been 04:07:01</p> <p>22 while I was still at Smith &amp; Wesson. So it would 04:07:04</p> <p>23 be -- this would predate the -- the cost savings 04:07:07</p> <p>24 sheet we looked at from Mr. Francis. 04:07:13</p> <p>25 Q. And do you recall what month you 04:07:17</p>	<p>1 year? 04:08:21</p> <p>2 A. I'm not positive, it's been so long. 04:08:21</p> <p>3 But I think it started in May and went through 04:08:28</p> <p>4 June. But we had to give part of our goals for the 04:08:32</p> <p>5 upcoming year. So it could have been March, April, 04:08:41</p> <p>6 something around then. I don't know. 04:08:47</p> <p>7 Q. Now, we had looked at the cutter -- 04:08:49</p> <p>8 cutter savings document that you provided to 04:08:54</p> <p>9 Mr. Debney in mid-July. 04:08:56</p> <p>10 A. Uh-huh. 04:08:56</p> <p>11 Q. Did you ever provide this analysis to 04:08:58</p> <p>12 anybody else at Smith &amp; Wesson? 04:09:00</p> <p>13 MR. LEE: Objection to the form of the 04:09:03</p> <p>14 question. "This analysis" being the one that he 04:09:04</p> <p>15 sent to Debney or the one that we're looking at, 04:09:06</p> <p>16 Exhibit 70? 04:09:08</p> <p>17 MS. BERTRAM: Good point. Let me 04:09:09</p> <p>18 strike that and ask it again. 04:09:11</p> <p>19 BY MS. BERTRAM: 04:09:12</p> <p>20 Q. The analysis that you provided to 04:09:12</p> <p>21 Mr. Debney on July 16th of 2014, did you provide 04:09:14</p> <p>22 that document to anybody else at Smith &amp; Wesson 04:09:19</p> <p>23 other than Mr. Debney? 04:09:22</p> <p>24 A. I do not believe so. 04:09:24</p> <p>25 Q. If you could go to Exhibit 42 of the 04:09:33</p>
565	567
<p>1 prepared it? 04:07:20</p> <p>2 A. Not really. I'm sure it would be on my 04:07:21</p> <p>3 mainframe at Smith &amp; Wesson when I actually created 04:07:23</p> <p>4 it. 04:07:27</p> <p>5 Q. Right. But you produced this document 04:07:27</p> <p>6 to us in the litigation. 04:07:29</p> <p>7 A. Okay. 04:07:32</p> <p>8 Q. Do you know whether you have a soft 04:07:32</p> <p>9 copy of this document in your possession? 04:07:35</p> <p>10 A. I probab -- what do you mean "soft 04:07:37</p> <p>11 copy"? 04:07:42</p> <p>12 Q. Electronic version. 04:07:42</p> <p>13 A. No. This would have been done while at 04:07:44</p> <p>14 work, so this would be on the mainframe at 04:07:47</p> <p>15 Smith &amp; Wesson. 04:07:51</p> <p>16 Q. Oh, okay. And -- and you don't recall 04:07:52</p> <p>17 what month you provided it to Mr. Flatley? 04:07:54</p> <p>18 A. No. 04:07:57</p> <p>19 Q. Was it -- did you provide it to him 04:07:59</p> <p>20 before you went on administrative leave? 04:08:01</p> <p>21 A. Oh, far before -- yes, a long time 04:08:03</p> <p>22 before. My -- my recollection, that this was 04:08:06</p> <p>23 produced maybe February and March of 2014, I think. 04:08:09</p> <p>24 But I'm -- I'm just guessing. 04:08:16</p> <p>25 Q. And when was the end of the fiscal 04:08:19</p>	<p>1 Smith &amp; Wesson exhibits. It's the second -- the 04:09:36</p> <p>2 second binder of exhibits. 04:09:50</p> <p>3 A. Okay. I've got 42. 04:09:51</p> <p>4 Q. And -- 04:09:54</p> <p>5 MR. LEE: Hold on. Hold on. Hold on. 04:09:55</p> <p>6 Hold on. Let me get there. 04:09:56</p> <p>7 MS. BERTRAM: Okay. 04:09:57</p> <p>8 MR. LEE: Forty -- got it. 04:10:07</p> <p>9 BY MS. BERTRAM: 04:10:09</p> <p>10 Q. And starting on Page 3 of Deposition 04:10:09</p> <p>11 Exhibit Number 42, this is a copy of a letter that 04:10:13</p> <p>12 you received from Mr. Cicero on or about 04:10:16</p> <p>13 August 20th, 2014, right? 04:10:21</p> <p>14 A. Yes. 04:10:23</p> <p>15 Q. And in your email dated August 28th to 04:10:24</p> <p>16 Mr. Cicero, you stated that you disagreed with 04:10:34</p> <p>17 Smith &amp; Wesson's finding; is that right? 04:10:41</p> <p>18 A. Yes. 04:10:43</p> <p>19 Q. And in your email, you don't cite any 04:10:44</p> <p>20 specific disagreement with Mr. Cicero's various 04:10:48</p> <p>21 findings, right? 04:10:51</p> <p>22 A. In that email, no. 04:10:52</p> <p>23 Q. And in that email, you didn't suggest 04:10:54</p> <p>24 any further documents for Mr. Cicero to review, 04:10:56</p> <p>25 correct? 04:11:00</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Baker, Earl Donald - Vol. III

October 10, 2020

23 (Pages 568 to 571)

568	570
<p>1 <b>A. No.</b> 04:11:00</p> <p>2 Q. And you don't suggest any additional 04:11:01</p> <p>3 witnesses he should speak with as well? 04:11:04</p> <p>4 <b>A. No, I -- not at that time.</b> 04:11:06</p> <p>5 Q. And when you sent this email out, you 04:11:09</p> <p>6 were represented by counsel at the Employment Law 04:11:16</p> <p>7 Group, correct? 04:11:18</p> <p>8 <b>A. Yes.</b> 04:11:19</p> <p>9 Q. And they had recommended that you 04:11:19</p> <p>10 include a statement in this email that you were 04:11:24</p> <p>11 prepared to return to work; is that right? 04:11:27</p> <p>12 MR. LEE: Objection -- objection to the 04:11:28</p> <p>13 form of the question. 04:11:29</p> <p>14 And do not answer that question. Do 04:11:30</p> <p>15 not -- do not go into any discussion you had or any 04:11:32</p> <p>16 recommendation or anything between you and your 04:11:35</p> <p>17 counsel. 04:11:37</p> <p>18 BY MS. BERTRAM: 04:11:39</p> <p>19 Q. Mr. Baker, you told friends and 04:11:40</p> <p>20 relatives that you included that statement in your 04:11:41</p> <p>21 email because your -- your -- your counsel 04:11:44</p> <p>22 recommended a kissing-your-cousin approach, 04:11:48</p> <p>23 correct? 04:11:52</p> <p>24 MR. LEE: Object -- same objection. 04:11:52</p> <p>25 BY MS. BERTRAM: 04:11:55</p>	<p>1 Employment Law Group advised Mr. Baker of this or 04:12:49</p> <p>2 that. That certainly is attorney-client privilege. 04:12:52</p> <p>3 You are direct -- 04:12:59</p> <p>4 MS. BERTRAM: I know that -- 04:12:59</p> <p>5 MR. LEE: You're direct -- let me 04:12:59</p> <p>6 finish. 04:13:00</p> <p>7 MS. BERTRAM: I know that through 04:13:00</p> <p>8 Mr. Baker's own -- own text messages. 04:13:02</p> <p>9 MR. LEE: I understand that. 04:13:03</p> <p>10 And my -- my direction to -- to the 04:13:05</p> <p>11 witness is, do not go into any discussions between 04:13:08</p> <p>12 you -- any discussions, any communications between 04:13:11</p> <p>13 you and your counsel. 04:13:14</p> <p>14 The Employment Law Group, whoever that 04:13:18</p> <p>15 is, any recommendations, any communications that 04:13:20</p> <p>16 you had with -- between you and your counsel, do 04:13:24</p> <p>17 not discuss it, do not testify about it. 04:13:27</p> <p>18 BY MS. BERTRAM: 04:13:30</p> <p>19 Q. Are you accepting your counsel's 04:13:31</p> <p>20 instruction not to answer my questions? 04:13:32</p> <p>21 <b>A. I am.</b> 04:13:33</p> <p>22 Q. Now, you've spoken at some length about 04:13:34</p> <p>23 your conversations with Mr. Cicero about certain of 04:13:56</p> <p>24 your concerns about Pioneer, right? 04:13:59</p> <p>25 <b>A. Yes.</b> 04:14:02</p>
569	571
<p>1 Q. You can answer the question. 04:11:55</p> <p>2 MS. BERTRAM: He -- he provided this 04:11:56</p> <p>3 information through texts and otherwise to third 04:11:57</p> <p>4 parties that were not part of any privilege. He, 04:12:00</p> <p>5 therefore, waived the privilege as to any 04:12:03</p> <p>6 communications about the -- that language that's 04:12:06</p> <p>7 included in the letter. 04:12:07</p> <p>8 MR. LEE: I disagree. He needs to 04:12:09</p> <p>9 knowingly, willingly waive the attorney-client 04:12:12</p> <p>10 privilege, and he did not. 04:12:15</p> <p>11 MS. BERTRAM: He did knowingly and 04:12:16</p> <p>12 willingly waive the attorney-client privilege 04:12:18</p> <p>13 because the Employment Law Group sent him a lengthy 04:12:20</p> <p>14 letter explaining to him that if he provided 04:12:23</p> <p>15 communications from the Employment Law Group to 04:12:26</p> <p>16 third parties, that it would waive the privilege. 04:12:28</p> <p>17 MR. LEE: Same -- 04:12:31</p> <p>18 MS. BERTRAM: And seeing that he did 04:12:32</p> <p>19 that repeatedly through text and through email and 04:12:35</p> <p>20 through verbal communications, I'm entitled to ask 04:12:39</p> <p>21 him about why he included this sentence in the 04:12:41</p> <p>22 letter. 04:12:43</p> <p>23 MR. LEE: Same objection. 04:12:44</p> <p>24 Same direction. Do not go -- 04:12:45</p> <p>25 I don't know how you know if the 04:12:48</p>	<p>1 Q. And it's your understanding that 04:14:04</p> <p>2 Mr. Cicero investigated each of your complaints, 04:14:06</p> <p>3 right? 04:14:09</p> <p>4 MR. LEE: Objection to the form -- 04:14:11</p> <p>5 THE WITNESS: Could you ask that again? 04:14:12</p> <p>6 MR. LEE: Objection to the form of the 04:14:13</p> <p>7 question. Calls for speculation. 04:14:14</p> <p>8 But you may answer. 04:14:15</p> <p>9 Can you have the question read back, 04:14:17</p> <p>10 please? 04:14:18</p> <p>11 MS. BERTRAM: And the response, please. 04:14:39</p> <p>12 (The following question was read back: 04:14:39</p> <p>13 Q: And it's your understanding that 04:14:42</p> <p>14 Mr. Cicero investigated each of your complaints, 04:14:43</p> <p>15 right?) 04:14:43</p> <p>16 THE REPORTER: And the answer I heard 04:14:44</p> <p>17 on top of the objection was yes. 04:14:48</p> <p>18 THE WITNESS: I said, could you ask the 04:14:51</p> <p>19 question again? I didn't -- 04:14:53</p> <p>20 THE REPORTER: Sorry. 04:14:53</p> <p>21 MS. BERTRAM: That's not what you said 04:14:54</p> <p>22 on the record, Mr. Baker. You said yes -- 04:14:55</p> <p>23 THE WITNESS: Okay. 04:14:58</p> <p>24 MR. LEE: That's fine. I said I 04:14:58</p> <p>25 object. I said it calls for speculation. And 04:14:59</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

572	574
<p>1 you're asking him questions about his understanding 04:14:55</p> <p>2 based on what. And I made my objection, and 04:14:57</p> <p>3 Earl -- Mr. -- Mr. Baker stated what he stated on 04:15:02</p> <p>4 the record about having the question read back. So 04:15:04</p> <p>5 that's the record. 04:15:08</p> <p>6 MS. BERTRAM: Let me -- 04:15:08</p> <p>7 MR. LEE: If you want to ask him 04:15:09</p> <p>8 again -- 04:15:09</p> <p>9 MS. BERTRAM: So that the record is 04:15:09</p> <p>10 clear, let me -- let me reask a similar question. 04:15:10</p> <p>11 BY MS. BERTRAM: 04:15:13</p> <p>12 Q. Mr. Baker, it's your understanding that 04:15:14</p> <p>13 Mr. Cicero investigated your concerns, correct? 04:15:17</p> <p>14 MR. LEE: Objection to the form of the 04:15:21</p> <p>15 question. Calls for speculation. 04:15:22</p> <p>16 But you may answer. 04:15:24</p> <p>17 THE WITNESS: It's my understanding he 04:15:25</p> <p>18 said he did. But I -- when I say I object to his 04:15:29</p> <p>19 conclusions, I, in that, without going into 04:15:34</p> <p>20 specifics, feel he did not investigate thoroughly. 04:15:38</p> <p>21 And I -- I disagreed with his conclusions because I 04:15:42</p> <p>22 don't believe he did a thorough job, or he would 04:15:48</p> <p>23 have come up with the right conclusion. 04:15:49</p> <p>24 BY MS. BERTRAM: 04:15:51</p> <p>25 Q. And Mr. Cicero met with you multiple 04:15:52</p>	<p>1 Sarbanes-Oxley? 04:17:00</p> <p>2 MR. LEE: Objection to the form of the 04:17:00</p> <p>3 question. 04:17:02</p> <p>4 But you may answer. 04:17:03</p> <p>5 THE WITNESS: I disagree with the 04:17:05</p> <p>6 characterization that "all" encompasses all of the 04:17:07</p> <p>7 documents that were relevant to that dispute. 04:17:10</p> <p>8 As you'll see in the emails, there were 04:17:15</p> <p>9 four different office break-ins that I reported to 04:17:17</p> <p>10 management, some in which those documents were 04:17:22</p> <p>11 erased from my computer as I was trying to provide 04:17:28</p> <p>12 them to Mr. Suraci and Mr. Cicero. So whether that 04:17:31</p> <p>13 comprises all, I couldn't say for certain. 04:17:36</p> <p>14 BY MS. BERTRAM: 04:17:41</p> <p>15 Q. Would it be fair to say that you 04:17:41</p> <p>16 provided to Mr. Cicero all of the documents to 04:17:42</p> <p>17 which you had access that you considered relevant 04:17:47</p> <p>18 to his investigation? 04:17:49</p> <p>19 MR. LEE: Objection to the form of the 04:17:50</p> <p>20 question. 04:17:52</p> <p>21 But you may answer. 04:17:52</p> <p>22 THE WITNESS: As I said, I feel that 04:17:54</p> <p>23 some of them were taken out of my computer, beyond 04:17:57</p> <p>24 my view. So I provided what I could obtain, still 04:18:01</p> <p>25 after the break-ins, and he used those to conduct 04:18:08</p>
573	575
<p>1 times during the course of his investigation, 04:15:54</p> <p>2 right? 04:15:56</p> <p>3 A. Yes. 04:15:57</p> <p>4 Q. And it's your understanding that he 04:15:59</p> <p>5 interviewed certain witnesses in connection with 04:16:04</p> <p>6 his investigation, correct? 04:16:06</p> <p>7 MR. LEE: Objection to the form of the 04:16:08</p> <p>8 question. Calls for speculation. 04:16:09</p> <p>9 But you may answer. 04:16:11</p> <p>10 THE WITNESS: It's my belief that he 04:16:13</p> <p>11 did talk to some. But whom, he didn't tell me who, 04:16:17</p> <p>12 when, where. He did his independent investigation 04:16:22</p> <p>13 outside of my view. 04:16:27</p> <p>14 BY MS. BERTRAM: 04:16:29</p> <p>15 Q. Right. And you don't know who he spoke 04:16:29</p> <p>16 with or what they've said, right? 04:16:31</p> <p>17 A. No, I do not. 04:16:32</p> <p>18 Q. And you provided emails and other 04:16:34</p> <p>19 documents to Mr. Cicero for his investigation, 04:16:40</p> <p>20 right? 04:16:43</p> <p>21 A. At his request, yes. 04:16:43</p> <p>22 Q. And would you agree that you provided 04:16:45</p> <p>23 to Mr. Cicero all of the emails, documents and 04:16:49</p> <p>24 other evidence that you relied upon at the time to 04:16:52</p> <p>25 conclude that Smith &amp; Wesson had violated 04:16:56</p>	<p>1 his investigation. 04:18:13</p> <p>2 BY MS. BERTRAM: 04:18:15</p> <p>3 Q. Now, you've also talked -- testified at 04:18:32</p> <p>4 length about some of your conversations 04:18:35</p> <p>5 with Ms. Bruce, correct? 04:18:36</p> <p>6 A. Yes. 04:18:39</p> <p>7 MR. LEE: You broke up. You broke up 04:18:39</p> <p>8 towards the end. What was -- 04:18:40</p> <p>9 Can you -- Cindy, can you read the 04:18:45</p> <p>10 question and answer back for me? 04:18:46</p> <p>11 MS. BERTRAM: Let me -- let me restate 04:18:47</p> <p>12 it -- 04:18:48</p> <p>13 MR. LEE: Yeah. 04:18:48</p> <p>14 MS. BERTRAM: -- because I can ask a 04:18:48</p> <p>15 better question. 04:18:49</p> <p>16 BY MS. BERTRAM: 04:18:50</p> <p>17 Q. It's your understanding, Mr. Baker, 04:18:50</p> <p>18 that Ann Bruce investigated certain of your 04:18:52</p> <p>19 concerns as well, right? 04:18:55</p> <p>20 MR. LEE: Objection to form. 04:18:55</p> <p>21 But you may answer. 04:18:56</p> <p>22 THE WITNESS: It's my understanding 04:18:59</p> <p>23 that after the fact she said she investigated, but 04:19:01</p> <p>24 I wasn't aware of any investigation she was doing 04:19:05</p> <p>25 during the time that I can recall. 04:19:10</p>

576	578
<p>1 BY MS. BERTRAM: 04:19:12</p> <p>2 Q. And -- and it's your understanding that 04:19:13</p> <p>3 Mr. Suraci, Ms. Salvador and other employees in the 04:19:15</p> <p>4 human resources department were working with her on 04:19:18</p> <p>5 her investigation, right? 04:19:21</p> <p>6 A. Yes. 04:19:23</p> <p>7 MR. LEE: Objection to -- 04:19:23</p> <p>8 THE WITNESS: Sorry. 04:19:25</p> <p>9 MR. LEE: Objection to form. 04:19:25</p> <p>10 But you may answer. 04:19:27</p> <p>11 Calls for speculation. 04:19:28</p> <p>12 THE WITNESS: I believe they were 04:19:29</p> <p>13 investigating into the case. 04:19:35</p> <p>14 BY MS. BERTRAM: 04:19:39</p> <p>15 Q. And they had met with you, as you 04:19:39</p> <p>16 testified, to discuss your concerns, right? 04:19:41</p> <p>17 MR. LEE: Objection to the form of the 04:19:44</p> <p>18 question. 04:19:45</p> <p>19 But you may answer. 04:19:47</p> <p>20 THE WITNESS: They did meet with me a 04:19:48</p> <p>21 number of times. 04:19:50</p> <p>22 BY MS. BERTRAM: 04:19:51</p> <p>23 Q. And you provided extensive 04:19:52</p> <p>24 documentation to them in support of your concerns, 04:19:54</p> <p>25 right? 04:19:56</p>	<p>1 to look for a job before you were terminated by 04:21:25</p> <p>2 Smith &amp; Wesson -- 04:21:28</p> <p>3 MR. LEE: Sorry to interrupt, Connie, 04:21:29</p> <p>4 but, again, for some reason, you're breaking -- 04:21:30</p> <p>5 you -- you're okay for a while, then you gar -- 04:21:33</p> <p>6 gets garbled. And I think I know what you're 04:21:34</p> <p>7 asking. So, so long as the court reporter and Earl 04:21:38</p> <p>8 hears, I'm okay, because I think I'm -- I -- I can 04:21:41</p> <p>9 read your lips, too, but -- 04:21:43</p> <p>10 Cindy, did you get everything? 04:22:01</p> <p>11 THE REPORTER: She didn't finish the 04:22:01</p> <p>12 question yet, I don't believe. 04:22:01</p> <p>13 MR. LEE: Yeah, but -- but you're 04:22:01</p> <p>14 not -- you're -- what you're hearing is not garbled 04:22:01</p> <p>15 at all?</p> <p>16 THE REPORTER: I mean, it's garbled a 04:22:01</p> <p>17 little bit, but I'm able --</p> <p>18 MR. LEE: Okay.</p> <p>19 THE REPORTER: -- to read her lips</p> <p>20 some, too. 04:22:02</p> <p>21 MR. LEE: Well, we don't want you to 04:22:02</p> <p>22 make a record reading somebody's lips. 04:22:04</p> <p>23 MS. BERTRAM: Let me -- I'm going to 04:22:07</p> <p>24 ask him more -- 04:22:09</p> <p>25 MR. LEE: You know what? So -- okay. 04:22:09</p>
577	579
<p>1 A. Yes. 04:19:57</p> <p>2 Q. And you identified the names of 04:19:58</p> <p>3 witnesses that you felt that they should speak to 04:20:00</p> <p>4 in connection with their investigation, right? 04:20:02</p> <p>5 A. I did. 04:20:05</p> <p>6 Q. And -- but you don't know who they 04:20:06</p> <p>7 spoke with, which witnesses they spoke with, right? 04:20:10</p> <p>8 MR. LEE: Objection to the form. Calls 04:20:14</p> <p>9 for speculation. 04:20:16</p> <p>10 But you may answer. 04:20:17</p> <p>11 THE WITNESS: I was aware of some of 04:20:18</p> <p>12 them. I was also aware of some people who I gave 04:20:22</p> <p>13 their name to them, and they said that they had 04:20:25</p> <p>14 never been talked to. 04:20:29</p> <p>15 BY MS. BERTRAM: 04:20:30</p> <p>16 Q. Right. But you understand that they 04:20:31</p> <p>17 did meet with certain witnesses in connection with 04:20:33</p> <p>18 their investigation, right? 04:20:35</p> <p>19 A. Yes. 04:20:37</p> <p>20 Q. And you don't know what those witnesses 04:20:38</p> <p>21 said to the HR representatives that were conducting 04:20:40</p> <p>22 the investigation, right? 04:20:44</p> <p>23 A. No. 04:20:45</p> <p>24 Q. Now, we've looked at some of the text 04:20:46</p> <p>25 messages of your communications about your efforts 04:21:23</p>	<p>1 When you laughed, and when you just said it, you 04:22:10</p> <p>2 were crystal clear, and -- there's something about 04:22:12</p> <p>3 the way -- just your movement and where the mic 04:22:16</p> <p>4 must be. 04:22:18</p> <p>5 MS. BERTRAM: I'm so close to the end, 04:22:19</p> <p>6 I'm not going to move again. 04:22:21</p> <p>7 MR. LEE: We don't want a record with 04:22:25</p> <p>8 lip -- lip -- lipreading. 04:22:28</p> <p>9 MS. BERTRAM: I -- I completely agree. 04:22:29</p> <p>10 BY MS. BERTRAM: 04:22:32</p> <p>11 Q. Mr. Baker, can you hear me? 04:22:32</p> <p>12 A. I can now. 04:22:34</p> <p>13 Q. What did you do to reach out to 04:22:35</p> <p>14 potential employers before you were terminated by 04:22:38</p> <p>15 Smith &amp; Wesson? 04:22:42</p> <p>16 A. I was -- I -- I did contact a number of 04:22:42</p> <p>17 places after my last deposition. I kind of looked 04:22:48</p> <p>18 at the timeline, and there were a couple that I did 04:22:53</p> <p>19 look at. I had relatives telling me that, you 04:22:55</p> <p>20 know, I should -- should probably cover my bases to 04:23:02</p> <p>21 look for other employment as well just in case it 04:23:07</p> <p>22 didn't go well. 04:23:10</p> <p>23 Q. And what steps did you undertake in 04:23:11</p> <p>24 looking for other employment during that period? 04:23:13</p> <p>25 A. I didn't -- I don't believe I put my 04:23:16</p>

580	582
<p>1 name on a job board, but I would from time to time 04:23:19</p> <p>2 peruse things. My wife -- I think she did look 04:23:25</p> <p>3 through job openings and might text or email me to 04:23:31</p> <p>4 make me aware, hey, there's a job with this or 04:23:37</p> <p>5 that, and -- so it was -- it was kind of a 04:23:40</p> <p>6 piecemeal approach. 04:23:43</p> <p>7 Q. And through those efforts, did any 04:23:44</p> <p>8 employer express an interest in employing you? 04:23:49</p> <p>9 MR. LEE: Objection -- 04:23:53</p> <p>10 THE WITNESS: Yeah, the -- 04:23:54</p> <p>11 Sorry. 04:23:54</p> <p>12 MR. LEE: Objection to form of the 04:23:54</p> <p>13 question. Calls for speculation. 04:23:55</p> <p>14 But you may answer as far as you know. 04:23:57</p> <p>15 THE WITNESS: I -- I did get a message 04:24:00</p> <p>16 back from a couple people saying that they had -- 04:24:04</p> <p>17 they would like a copy of my résumé or, you know, 04:24:11</p> <p>18 kind of taking it to the next step, so that at 04:24:14</p> <p>19 least the preliminary conversation they were 04:24:17</p> <p>20 interested enough to inquire further. 04:24:20</p> <p>21 BY MS. BERTRAM: 04:24:23</p> <p>22 Q. And which companies expressed an 04:24:23</p> <p>23 interest in you during that period? 04:24:26</p> <p>24 A. I believe that the gentleman that 04:24:28</p> <p>25 worked for Balzers, he had -- he had asked me to 04:24:35</p>	<p>1 termination? 04:26:12</p> <p>2 A. I may have. 04:26:15</p> <p>3 MR. LEE: Objection to the form of the 04:26:15</p> <p>4 question. 04:26:16</p> <p>5 But you may answer. 04:26:17</p> <p>6 THE WITNESS: I may have. I didn't 04:26:18</p> <p>7 actually recall a lot of them until I read through 04:26:20</p> <p>8 the text messages. So there may be others, but I'd 04:26:27</p> <p>9 say those were the ones that expressed interest or 04:26:32</p> <p>10 stood out in my mind. 04:26:36</p> <p>11 BY MS. BERTRAM: 04:26:38</p> <p>12 Q. Okay. Let's focus on Gurling [sic] 04:26:38</p> <p>13 first. 04:26:42</p> <p>14 A. I'm sorry. It's Guhring, no L. 04:26:42</p> <p>15 Q. Guhring? 04:26:47</p> <p>16 A. Yes. 04:26:49</p> <p>17 Q. Okay. And when did you communicate 04:26:49</p> <p>18 with them about a potential position? 04:26:51</p> <p>19 A. I believe it was while I was on paid 04:26:53</p> <p>20 leave. I can't tell you the exact month but would 04:26:57</p> <p>21 guess it would be late July. 04:27:03</p> <p>22 Q. And did you discuss a particular 04:27:08</p> <p>23 position with them? 04:27:10</p> <p>24 A. Yes. 04:27:12</p> <p>25 Q. What position? 04:27:13</p>
581	583
<p>1 forward him my résumé. I did speak with Guhring, a 04:24:42</p> <p>2 drill company. 04:24:51</p> <p>3 Q. How do you -- how do you spell that? 04:24:52</p> <p>4 A. It's G-U-R-H [sic] -- it's got an H in 04:24:53</p> <p>5 there. It's like a German word. 04:24:58</p> <p>6 G-U-E-R-H [sic] -- I'm not positive. I -- 04:25:06</p> <p>7 Q. Gurling or -- 04:25:08</p> <p>8 A. Yeah, Gurling [sic]. 04:25:09</p> <p>9 Q. Okay. 04:25:11</p> <p>10 A. They're a drill manufacturer, and they 04:25:12</p> <p>11 have an office in -- I think it was Bloomington, 04:25:14</p> <p>12 Connecticut, which was probably the same distance 04:25:25</p> <p>13 from my apartment as Smith &amp; Wesson was. 04:25:27</p> <p>14 Q. And you've testified that you spoke 04:25:31</p> <p>15 with MSC as well, right? 04:25:32</p> <p>16 A. I put out some feelers, and my wife 04:25:36</p> <p>17 found something on a job board online for MSC that 04:25:39</p> <p>18 we applied for. 04:25:47</p> <p>19 Q. And what about Melin, M-E-L-I-N, Tool? 04:25:48</p> <p>20 A. Yes. 04:25:53</p> <p>21 Q. Did you have communications with them? 04:25:53</p> <p>22 A. I -- I did. 04:25:56</p> <p>23 Q. And so other than MSC, Melin Tool, 04:26:00</p> <p>24 Balzers and Gurling [sic], did you have expressions 04:26:06</p> <p>25 of interest from any other employer prior to your 04:26:10</p>	<p>1 A. They had a plant manager opening at the 04:27:14</p> <p>2 Bloom -- Bloomfield or Blooming -- it's the town 04:27:23</p> <p>3 close to Enfield. I -- I can't remember exactly 04:27:28</p> <p>4 the town name. 04:27:32</p> <p>5 Q. Was that in Connecticut or 04:27:32</p> <p>6 Massachusetts? 04:27:37</p> <p>7 A. It was in Connecticut. 04:27:38</p> <p>8 Q. Okay. 04:27:38</p> <p>9 A. I lived in Connecticut. So it was 04:27:40</p> <p>10 about equal distance. Instead of going north, they 04:27:41</p> <p>11 would go south. 04:27:44</p> <p>12 Q. And were there any discussions about 04:27:46</p> <p>13 the compensation or benefit -- benefits that that 04:27:47</p> <p>14 position would offer? 04:27:51</p> <p>15 A. We may have. I knew they were 04:27:52</p> <p>16 interested enough that they may have. 04:28:00</p> <p>17 Q. And did you -- did you have an 04:28:03</p> <p>18 interview with them, either by phone or in person? 04:28:04</p> <p>19 A. Both. 04:28:10</p> <p>20 Q. You had both. 04:28:11</p> <p>21 Okay. And did you withdraw from 04:28:13</p> <p>22 consideration from that position at any point? 04:28:15</p> <p>23 A. No, not that I know of. 04:28:18</p> <p>24 Q. Okay. Did you ever receive an offer 04:28:20</p> <p>25 from them? 04:28:22</p>



584	586
<p>1 <b>A. No.</b> 04:28:23</p> <p>2 Q. Do you know why you were not offered a 04:28:26</p> <p>3 position? 04:28:29</p> <p>4 MR. LEE: Objection. Objection to the 04:28:29</p> <p>5 form of the question. Calls for speculation. 04:28:30</p> <p>6 If you know, you can answer. 04:28:32</p> <p>7 THE WITNESS: I don't know 04:28:34</p> <p>8 specifically. I had every expectation that I would 04:28:38</p> <p>9 get the job because they paid a good expense to fly 04:28:40</p> <p>10 me to Milwaukee and speak with more corporate-type 04:28:46</p> <p>11 people. But in the end, I -- I didn't get the job. 04:28:51</p> <p>12 BY MS. BERTRAM: 04:28:56</p> <p>13 Q. And did they offer any compensation or 04:28:57</p> <p>14 benefits to you or discuss with you the 04:29:00</p> <p>15 compensation, benefits that would be offered by the 04:29:02</p> <p>16 position? 04:29:04</p> <p>17 <b>A. Knowing the level of -- of interview we 04:29:04</b></p> <p>18 were at, they may have, but I don't -- can't say 04:29:12</p> <p>19 for certain they did. 04:29:15</p> <p>20 Q. And other than the text messages that 04:29:17</p> <p>21 you reviewed, are there -- do you have any other -- 04:29:20</p> <p>22 other documents relating to your efforts to secure 04:29:23</p> <p>23 employment with Guhring? 04:29:26</p> <p>24 <b>A. Any document that I had, I would have 04:29:29</b></p> <p>25 forwarded in discovery. So you -- you really have 04:29:32</p>	<p>1 What is Melin Tool? 04:30:51</p> <p>2 <b>A. Melin Tool was formally a -- used to be 04:30:53</b></p> <p>3 Weldon Tool that made that Weldon fixture I was 04:30:59</p> <p>4 talking about, and they also make their own brand 04:31:02</p> <p>5 of -- of cutter. So they've been around a number 04:31:06</p> <p>6 of years. And they had a position that would be 04:31:10</p> <p>7 in -- as a liaison between them and the end user to 04:31:18</p> <p>8 optimize the use of those cutters. 04:31:23</p> <p>9 Q. Did you say cars, C-A-R-S? 04:31:26</p> <p>10 <b>A. Cutters. Cutters.</b> 04:31:30</p> <p>11 Q. Cutters. Okay. 04:31:31</p> <p>12 <b>A. Sorry. My voice is getting raspy.</b> 04:31:33</p> <p>13 Q. And during what period did you talk 04:31:40</p> <p>14 with them? 04:31:41</p> <p>15 <b>A. It would have been in the same time 04:31:42</b></p> <p>16 frame. I think it was after I had spoken to 04:31:43</p> <p>17 Guhring, but it would -- would have been in or 04:31:51</p> <p>18 around the same period of time while I was on paid 04:31:55</p> <p>19 leave. 04:31:59</p> <p>20 Q. And did you participate in an interview 04:32:00</p> <p>21 with them? 04:32:03</p> <p>22 <b>A. Yes, I did.</b> 04:32:04</p> <p>23 Q. When did that take place? 04:32:05</p> <p>24 <b>A. I don't know the specific time. Just 04:32:07</b></p> <p>25 around those months, but I don't know exact -- 04:32:11</p>
585	587
<p>1 everything I've got. 04:29:36</p> <p>2 Q. And you also spoke with Balzers, right? 04:29:37</p> <p>3 <b>A. Yes.</b> 04:29:41</p> <p>4 Q. During what period did you speak with 04:29:43</p> <p>5 them? 04:29:45</p> <p>6 <b>A. I -- I want to correct that statement. 04:29:46</b></p> <p>7 I didn't really have a speak -- I didn't speak with 04:29:47</p> <p>8 Balzers. I spoke with Chet Lewis, but it was more 04:29:51</p> <p>9 on a personal level-type thing. But as far as the 04:29:55</p> <p>10 people that would actually have the authority to 04:30:02</p> <p>11 offer you a -- or offer me a job, I never spoke 04:30:07</p> <p>12 with those people. 04:30:12</p> <p>13 Q. Okay. And did you ever have any 04:30:13</p> <p>14 discussions with Chet or anyone else there about 04:30:15</p> <p>15 any particular position with the company? 04:30:18</p> <p>16 <b>A. No. But I didn't know of any openings, 04:30:20</b></p> <p>17 and that was probably the nature of my 04:30:24</p> <p>18 communication with -- with Chet, was to find out if 04:30:26</p> <p>19 he was aware of any openings. And he asked for a 04:30:30</p> <p>20 résumé, and that was pretty much all that it was. 04:30:34</p> <p>21 Q. Okay. And you also spoke with Melin 04:30:37</p> <p>22 Tools, M-E-L-I-N? 04:30:42</p> <p>23 <b>A. Yes.</b> 04:30:43</p> <p>24 Q. And what -- what kind of -- what kind 04:30:44</p> <p>25 of job -- I'm sorry. Strike that. 04:30:48</p>	<p>1 Q. Was it before you left Smith &amp; Wesson? 04:32:15</p> <p>2 <b>A. I would have been on paid leave, but 04:32:17</b></p> <p>3 it's possible it could have either been the end of 04:32:21</p> <p>4 the paid leave or after my termination. I can't -- 04:32:26</p> <p>5 can't recall which, but it was right towards that 04:32:29</p> <p>6 very end period. 04:32:31</p> <p>7 Q. And did they offer you employment? 04:32:34</p> <p>8 <b>A. No.</b> 04:32:37</p> <p>9 Q. And do you know why they did not offer 04:32:38</p> <p>10 you employment? 04:32:44</p> <p>11 <b>A. No --</b> 04:32:44</p> <p>12 MR. LEE: Objection to form. Objection 04:32:46</p> <p>13 to form. 04:32:47</p> <p>14 If you know, you may answer. 04:32:48</p> <p>15 THE WITNESS: They didn't communicate 04:32:49</p> <p>16 anything to me as why I didn't get it. 04:32:51</p> <p>17 BY MS. BERTRAM: 04:32:55</p> <p>18 Q. I'm going to refer you to Exhibit 4, 04:33:03</p> <p>19 which is the text messages that we were looking at 04:33:05</p> <p>20 during your deposition on September 25th. 04:33:08</p> <p>21 <b>A. Okay.</b> 04:33:11</p> <p>22 Q. And look at the entry for September 22. 04:33:14</p> <p>23 MR. LEE: September 22, 2014? 04:33:35</p> <p>24 MS. BERTRAM: Yes. 04:33:37</p> <p>25 THE WITNESS: Okay. There are a number 04:33:47</p>

588	590
<p>1 of them. 04:33:48</p> <p>2 BY MS. BERTRAM: 04:33:49</p> <p>3 Q. Okay. 04:33:49</p> <p>4 MR. LEE: Hold on. Hold on. Let me 04:33:50</p> <p>5 get there. September 22. 04:33:52</p> <p>6 BY MS. BERTRAM: 04:34:10</p> <p>7 Q. Look at the entry for Line 504, which 04:34:10</p> <p>8 is -- should be at the bottom of the page. 04:34:12</p> <p>9 A. Uh-huh. 04:34:14</p> <p>10 MS. BERTRAM: John, are you there yet? 04:34:15</p> <p>11 MR. LEE: Yeah, I'm there. 04:34:17</p> <p>12 MS. BERTRAM: Okay. 04:34:18</p> <p>13 BY MS. BERTRAM: 04:34:18</p> <p>14 Q. And it's an email from your wife to 04:34:19</p> <p>15 David Wylie, right? 04:34:21</p> <p>16 A. Yes. 04:34:24</p> <p>17 Q. And it says: Earl -- 04:34:25</p> <p>18 MR. LEE: Objection. It's a -- it's a 04:34:25</p> <p>19 text. It's not an email. But go ahead. 04:34:27</p> <p>20 BY MS. BERTRAM: 04:34:29</p> <p>21 Q. And in the text, she states: Earl got 04:34:29</p> <p>22 the job in Ohio. He just found out today; is that 04:34:32</p> <p>23 right? 04:34:36</p> <p>24 A. Yes. 04:34:36</p> <p>25 Q. Did you receive a job offer from 04:34:37</p>	<p>1 got the message they were going another way. But 04:36:06</p> <p>2 if I had gone based on what he had implied at that 04:36:09</p> <p>3 point, that I was going to be hired for either one 04:36:14</p> <p>4 of the two positions. But that never happened. 04:36:16</p> <p>5 Q. And both of the positions were going to 04:36:20</p> <p>6 be in Cleveland; is that right? 04:36:21</p> <p>7 A. One would be a job in Cleveland. The 04:36:23</p> <p>8 other was a job that would be meeting their 04:36:26</p> <p>9 customers. So it would be more of a salesman type 04:36:31</p> <p>10 of thing where you're out on -- working out 04:36:35</p> <p>11 logistics at their plant. So that could be done 04:36:38</p> <p>12 from any number of areas. So you wouldn't 04:36:41</p> <p>13 necessarily have to live in Cleveland to do it. 04:36:45</p> <p>14 Q. And with respect to either of the 04:36:50</p> <p>15 positions that you've discussed with Melin Tool, 04:36:53</p> <p>16 did they identify any compensation or benefits 04:36:56</p> <p>17 associated with the positions? 04:37:02</p> <p>18 A. It's my recollection I don't believe 04:37:04</p> <p>19 they did. Many of the interviews I have -- but I 04:37:06</p> <p>20 can't tell you the specifics this long back -- but 04:37:12</p> <p>21 they would ask me what my compensation currently 04:37:14</p> <p>22 was. I would tell them, and they would proceed 04:37:17</p> <p>23 with kind of, we're -- we're kind of in that range, 04:37:21</p> <p>24 but I didn't know if it'd be a little bit less or a 04:37:26</p> <p>25 little bit more. 04:37:30</p>
589	591
<p>1 Melin Tools on September 22nd? 04:34:40</p> <p>2 A. No. 04:34:44</p> <p>3 Q. Pardon me? 04:34:46</p> <p>4 A. No, I did not. 04:34:47</p> <p>5 Q. Okay. Do you know why she would be 04:34:48</p> <p>6 representing that if you did not? 04:34:50</p> <p>7 A. A lot of the -- the conversations -- 04:34:52</p> <p>8 you asked what -- what was exactly what you asked, 04:34:58</p> <p>9 again? 04:35:04</p> <p>10 Q. Do you know why she would be 04:35:04</p> <p>11 representing that to -- in a text message if that 04:35:06</p> <p>12 was not the case? 04:35:10</p> <p>13 A. Yeah. Because I flew out to -- to 04:35:12</p> <p>14 Cleveland to meet the owners of Melin, and the 04:35:17</p> <p>15 interview went well. And he told me at that point 04:35:23</p> <p>16 that I'm considering you for two different -- two 04:35:28</p> <p>17 different positions. I'm not sure which, but like 04:35:34</p> <p>18 everything was -- it was my expectation. 04:35:38</p> <p>19 So as her texts go, I communicate what 04:35:41</p> <p>20 I'm hearing and putting my spin on it. So I'd 04:35:47</p> <p>21 probably told her I got the job based on what he's 04:35:52</p> <p>22 saying. I'm going to consider you for one of two 04:35:55</p> <p>23 jobs. 04:35:58</p> <p>24 Then I got back, and he never called 04:35:59</p> <p>25 for a week. So I eventually called him back, and I 04:36:01</p>	<p>1 But if they were nowhere in the range 04:37:31</p> <p>2 of what I was making at Smith &amp; Wesson with an 04:37:33</p> <p>3 interview, they would pretty much tell -- tell me 04:37:36</p> <p>4 up front it would be a nonstarter, that they -- 04:37:39</p> <p>5 they couldn't come close to that pay. 04:37:43</p> <p>6 In this case, I think I provided my 04:37:45</p> <p>7 information, and -- but I don't believe I got a 04:37:47</p> <p>8 specific number from them. 04:37:52</p> <p>9 Q. Did you receive any job offers from any 04:37:54</p> <p>10 employers prior to your termination from Smith &amp; 04:37:57</p> <p>11 Wesson while you were employed by the company? 04:38:00</p> <p>12 A. No. 04:38:02</p> <p>13 Q. Could you -- did you withdraw from 04:38:03</p> <p>14 consideration for any position before you were 04:38:11</p> <p>15 terminated by Smith &amp; Wesson? 04:38:16</p> <p>16 A. Not that I can recall. 04:38:18</p> <p>17 MS. BERTRAM: I don't think I have 04:38:22</p> <p>18 additional questions, but let's take a five-minute 04:38:24</p> <p>19 break so I can double-check my notes. 04:38:27</p> <p>20 MR. LEE: That's fine. 04:38:29</p> <p>21 THE VIDEOGRAPHER: Going off -- 04:38:30</p> <p>22 MR. LEE: I'm going to break -- okay. 04:38:30</p> <p>23 THE VIDEOGRAPHER: Going off the record 04:38:34</p> <p>24 at 4:38. 04:38:35</p> <p>25 * * * 04:38:37</p>

Baker, Earl Donald - Vol. III

October 10, 2020

29 (Pages 592 to 594)

<p style="text-align: right;">592</p> <p>1 (Whereupon, there was a recess in the 04:38:37</p> <p>2 proceedings from 4:38 p.m. to 4:44 p.m.) 04:43:56</p> <p>3 * * * 04:43:57</p> <p>4 THE VIDEOGRAPHER: Going on the record 04:43:57</p> <p>5 at 4:44. 04:44:03</p> <p>6 MS. BERTRAM: I don't have any 04:44:07</p> <p>7 additional questions. 04:44:08</p> <p>8 MR. LEE: Okay. Signature is reserved. 04:44:09</p> <p>9 Thank you. 04:44:12</p> <p>10 Well, for a Saturday afternoon, that 04:44:14</p> <p>11 wasn't so bad, Earl, was it? 04:44:15</p> <p>12 THE WITNESS: No, it's not too bad. 04:44:15</p> <p>13 MR. LEE: And everybody else, too, 04:44:20</p> <p>14 thanks for working on a -- on a weekend. Have a 04:44:20</p> <p>15 good weekend, everybody. 04:44:22</p> <p>16 MS. BERTRAM: Thank you. 04:44:24</p> <p>17 THE VIDEOGRAPHER: Going off the record 04:44:24</p> <p>18 at 4:44. 04:44:25</p> <p>19 - - -</p> <p>20 (Read and sign reserved.)</p> <p>21 - - -</p> <p>22 (Deposition concluded at 4:44 p.m.)</p> <p>23 - - -</p> <p>24</p> <p>25</p>	<p style="text-align: right;">594</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, _____, do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true, correct</p> <p>6 and complete transcription of the testimony given by</p> <p>7 me, and any corrections appear on the attached Errata</p> <p>8 Sheet signed by me.</p> <p>9</p> <p>10 _____</p> <p>11 (DATE) (SIGNATURE)</p> <p>12</p> <p>13 NOTARIZATION (If Required)</p> <p>14</p> <p>15 State of _____</p> <p>16 County of _____</p> <p>17</p> <p>18 Subscribed and sworn to (or affirmed) before me on</p> <p>19 this _____ day of _____, 20____, by</p> <p>20 _____, proved to me on the</p> <p>21 basis of satisfactory evidence to be the person who</p> <p>22 appeared before me.</p> <p>23</p> <p>24 Signature: _____</p> <p>25 (Seal)</p>
<p style="text-align: right;">593</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Cindy A. Hayden, Registered Merit</p> <p>4 Reporter and Notary Public for the State of North</p> <p>5 Carolina at Large, do hereby certify:</p> <p>6</p> <p>7 That the foregoing deposition was taken</p> <p>8 before me on the date and at the time and location</p> <p>9 stated on Page 1 of this transcript; that the</p> <p>10 deponent was duly sworn to testify to the truth,</p> <p>11 the whole truth and nothing but the truth; that the</p> <p>12 testimony of the deponent and all objections made</p> <p>13 at the time of the examination were recorded</p> <p>14 stenographically by me and were thereafter</p> <p>15 transcribed; that the foregoing deposition as typed</p> <p>16 is a true, accurate and complete record of the</p> <p>17 testimony of the deponent and of all objections</p> <p>18 made at the time of the examination to the best of</p> <p>19 my ability.</p> <p>20</p> <p>21 I further certify that I am neither related</p> <p>22 to nor counsel for any party to the cause pending</p> <p>23 or interested in the events thereof. Witness my</p> <p>24 hand, this 12th of October, 2020, at Concord,</p> <p>25 Cabarrus County, North Carolina.</p> <p>26</p> <p>27 _____</p> <p>28</p> <p>29 Cindy A. Hayden,</p> <p>30 Registered Merit Reporter</p> <p>31 Notary Public</p> <p>32 State of North Carolina at Large</p> <p>33 My Commission expires:</p> <p>34 April 7, 2022</p> <p>35</p>	

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com